

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

APRIL 24, 1934, TO DECEMBER 2, 1934

PUBLISHED BY THE COMMISSION

VOLUME 19



**UNITED STATES
GOVERNMENT PRINTING OFFICE
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MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF DECEMBER 2, 1934

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

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

EWIN L. DAVIS.

Took oath of office May 26, 1933.

CHARLES H. MARCH.

Took oath of office February 1, 1929.

W. A. AYRES.

Took oath of office August 23, 1934.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

During the period April 24, 1934, to December 2, 1934, there also served as commissioners—

JAMES M. LANDIS.

Took oath of office October 10, 1933. Service terminated July 2, 1934.

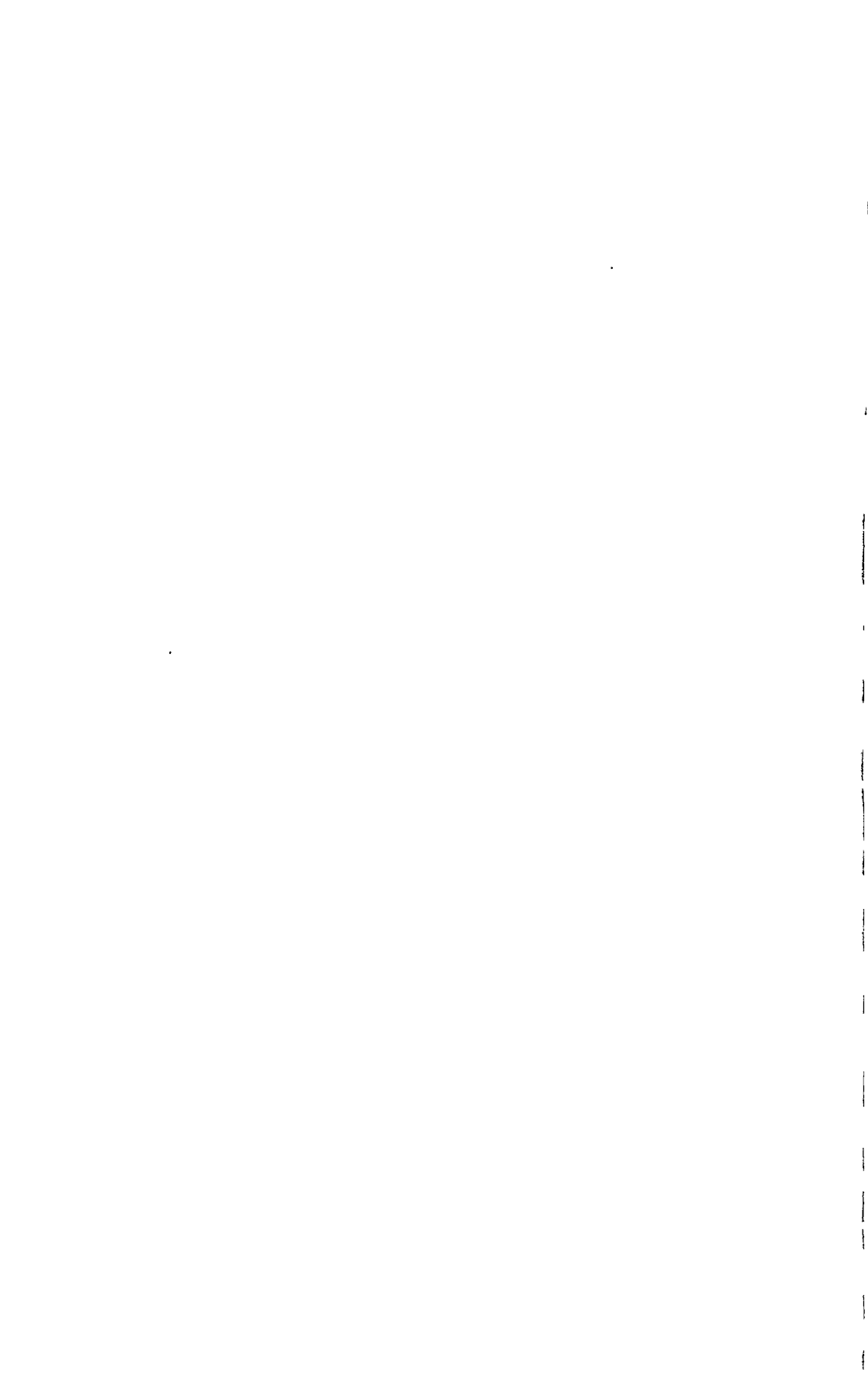
GEORGE C. MATHEWS.

Took oath of office October 27, 1933. Service terminated July 2, 1934.

¹ Second term.

ACKNOWLEDGMENT

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



CONTENTS¹

| | Page |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Members of the Commission----- | II |
| Table of cases reported----- | VII |
| Table of stipulations reported----- | XI |
| Table of cases in which petitions for review or applications to enforce the orders of the Commission have been filed in the circuit court of appeals----- | xvii |
| Cases in which cease and desist orders have been entered----- | 1 |
| Cases in which closing or dismissing orders have been entered----- | 485 |
| Stipulations: | |
| General----- | 493 |
| False, misleading, and fraudulent advertising----- | 555 |
| Appendix: | |
| Acts of Congress from which the Commission derives its powers. ² | |
| Federal Trade Commission Act----- | 697 |
| Clayton Act----- | 711 |
| Webb Act (Export Trade Act)----- | 737 |
| Sherman Act----- | 743 |
| National Industrial Recovery Act----- | 747 |
| Executive order of January 20, 1934 ³ ----- | 757 |
| Rules of Practice----- | 759 |
| Table of commodities: | |
| Desist orders----- | 771 |
| Stipulations----- | 774 |
| Index: | |
| Desist orders----- | 781 |
| Stipulations----- | 786 |

¹ No court decisions in cases instituted against or by the Commission are published in this volume, due to the fact that no such cases were handed down during the period covered, namely, April 24, 1934 to December 2, 1934.

² The Securities Exchange Act of 1934 transferred jurisdiction over the Securities Act of 1933 from the Commission to the new Securities and Exchange Commission created by said act.

³ Relating to N. R. A. cases before the Commission.

TABLE OF CASES ¹

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. Those in first letter caps, ordinary type, also refer to cases in which such orders have been issued, but which are not here reported in full. The names in *italics* refer to cases in which the Commission has entered orders of dismissal or orders closing case only]

| Name | Page |
|------------------------------------------------------------------------------|------|
| ADAMS PAINT CO., THE----- | 7 |
| <i>Allen Co., L. J.</i> (Albert Lewis doing business as) <i>et al.</i> ----- | 488 |
| AMBER-ITA (Ward J. Miller doing business as)----- | 57 |
| AMERICAN DRUG CORPORATION----- | 436 |
| AMERICAN MEMORIAL CO----- | 356 |
| AMERICAN MERCHANDISE CO., INC., ET AL----- | 478 |
| <i>American Smelting & Refining Co.</i> ² ----- | 94 |
| <i>Amiesite Asphalt Co. of America, et al.</i> ----- | 489 |
| AQUA SEAL CORPORATION, ET AL----- | 217 |
| A. Schwartz & Son (Abraham Schwartz, et al., doing business as)----- | 260 |
| ASHLEY, A. G. (doing business as Chic-American Distributing Co.)----- | 79 |
| <i>Atlas Doll & Toy Co., Inc.</i> ----- | 485 |
| AVERBACH, MORRIS (doing business as The Muriel Co.), ET AL----- | 330 |
| <i>Badger Candy Co.</i> ----- | 487 |
| BATTLE CREEK APPLIANCE CO., LTD., ET AL----- | 381 |
| BAYER CO., INC----- | 229 |
| BEICH CO., PAUL F----- | 442 |
| Blecker Shoe Co., Inc----- | 261 |
| BOBO, W. THOMPSON, ET AL----- | 381 |
| <i>Brauer, Jacob, et al.</i> (doing business as Hecht-Cohen & Co.)----- | 486 |
| BRILLIANT BROTHERS CO. (Frank Brilliant, et al., doing business as)----- | 248 |
| CALIFORNIA ALFALFA PRODUCTS CO----- | 53 |
| <i>Candy Brands, Inc.</i> ----- | 490 |
| <i>Century Co., The</i> ----- | 491 |
| CHARLES R. SPICER CO., INC., THE----- | 107 |
| CHICAGO DENTAL HOUSE, INC. (Benjamin D. Ritholz doing business as), ETC----- | 405 |
| CHIC-AMERICAN DISTRIBUTING CO. (A. G. Ashley doing business as)----- | 79 |

¹As a matter of convenience there were included in Volume 18, the preceding volume, opinions, findings and orders in two stop order proceedings under the Securities Act of 1933, during the period the Commission was administering this act and before jurisdiction thereof was transferred to the new Securities and Exchange Commission, which would otherwise have been published in usual course, in the instant volume. The opinions, findings and orders referred to are in the cases of Commonwealth Bond Corp., as Committee, etc., File No. 2-440, 18 F. T. C. 635, and Unity Gold Corp., File No. 2-411, 18 F. T. C. 649.

² Reported in full with opinion.

| Name | Page |
|----------------------------------------------------------------------------------------------|------|
| <i>Cincinnati Candy Co.</i> ----- | 486 |
| CIVIL SERVICE TRAINING BUREAU, INC.----- | 166 |
| C. J. MOFFETT MEDICINE CO. (Minnie L. Flournoy, et al., doing business as)----- | 140 |
| <i>Cohen, Martin, et al.</i> (doing business as Hecht-Cohen & Co.)----- | 486 |
| COLE, BRYAN, ET AL.----- | 346 |
| <i>Coumbe Co., S. C., et al.</i> ----- | 487 |
| CROXON, INC., ET AL.----- | 35 |
| CURRIER'S TABLETS, INC.----- | 119 |
| DeWITT P. HENRY CO.----- | 1 |
| DODSON, J. G., ET AL. (doing business as Ironized Yeast Co.)----- | 128 |
| DREW CORPORATION----- | 50 |
| DUPLAN SILK CORPORATION, ET AL.----- | 217 |
| EASTMAN, SCOTT & CO. (doing business as Home Research, Inc.)--- | 369 |
| <i>Ellison-Gibbons, Inc., et al.</i> ----- | 488 |
| E. MOSS CO. (Milton E. Moss, et al., doing business as, etc.)----- | 467 |
| E. SNYDER & SON (J. Oliver Snyder doing business as)----- | 18 |
| FEIGHERY, J., ET AL. (doing business as Leipzig Importing Co.)--- | 280 |
| FLOURNOY, MINNIE L., ET AL. (doing business as C. J. Moffett Medicine Co.)----- | 140 |
| FOX SHOE CO.----- | 257 |
| G. & J. MANUFACTURING CO. (Harry Greenberg, et al., doing business as, etc.), ET AL.----- | 478 |
| GEOGRAPHICAL PUBLISHING CO., THE----- | 473 |
| GEORGE ZIEGLER CO.----- | 394 |
| GRAYBAN, INC.----- | 252 |
| GREENBERG & JOSEFSBERG (Harry Greenberg, et al. doing business as), ETC----- | 478 |
| <i>Green, Bert, et al.</i> ----- | 488 |
| GRIFFIN GROCERY CO., ET AL.----- | 346 |
| <i>Headley Chocolate Co.</i> ----- | 485 |
| <i>Hecht-Cohen & Co.</i> (Jacob Brauer, et al. doing business as)----- | 486 |
| HENRY CO., DeWITT P.----- | 1 |
| Hill Shoe Co. (P. Trachtenberg doing business as)----- | 260 |
| HOME RESEARCH, INC. (Eastman, Scott & Co. doing business as)--- | 369 |
| IRONIZED YEAST CO. (J. G. Dodson, et al. doing business as)----- | 128 |
| JACOBSON, IRVING ROY, ET AL.----- | 242 |
| JEAN JORDEAU, INC., ET AL.----- | 150 |
| JOHNSON CANDY CO., WALTER H.----- | 303 |
| JORDEAU, INC., JEAN, ET AL.----- | 150 |
| JOSEFSBERG, LEO, ET AL.----- | 478 |
| KUFFERMAN, M., ET AL. (doing business as Leipzig Importing Co.)--- | 280 |
| LANDIS MEDICINE CO. (Henry B. Tonnies doing business as)----- | 45 |
| LAN, SAMUEL, ET AL. (doing business as Leipzig Importing Co.)----- | 280 |
| LAVINE, S., ET AL. (doing business as Leipzig Importing Co.)----- | 280 |
| LEFRIE, BERTHA E., ET AL.----- | 150 |
| LEIPZIG IMPORTING CO. (M. Kufferman, et al. doing business as)--- | 280 |
| <i>Lewis, Albert</i> (doing business as L. J. Allen Co. and Model Tailoring)--- | 488 |
| LIGHTNING CO., THE----- | 85 |
| LINCOLN EXTENSION UNIVERSITY, INC.----- | 145 |
| <i>L. J. Allen Co.</i> (Albert Lewis doing business as), <i>et al.</i> ----- | 488 |

| Name | Page |
|-------------------------------------------------------------------------------------------------------|------|
| LORENZ, WILLIAM F., JR. (doing business as Southern Crushed Shell Co.)----- | 375 |
| MACEY CO., THE----- | 31 |
| MAID-O-BEST, INC., ET AL----- | 330 |
| MATHES, BRYAN, ET AL----- | 346 |
| M. E. MOSS MANUFACTURING CO. (Milton E. Moss, et al. doing business as, etc.)----- | 467 |
| MENDELSON, JACK D. (doing business as Metro Manufacturing Co.)----- | 363 |
| METRO MANUFACTURING CO. (Jack D. Mendelson doing business as)----- | 363 |
| MILLER, LOUIS A. (doing business as Southern Milling Co.)----- | 225 |
| MILLER, WARD J. (doing business as Amber-Ita)----- | 57 |
| <i>Miracle Wax Co.</i> ----- | 485 |
| MIXER MEDICINE CO. (Charles M. Mixes, proprietor)----- | 203 |
| <i>Model Tailoring Co.</i> (Albert Lewis doing business as), <i>et al.</i> ----- | 488 |
| MOFFETT MEDICINE CO., C. J. (Minnie L. Flournoy et al. doing business as)----- | 140 |
| MOSES, G. M., ET AL----- | 330 |
| MOSS MANUFACTURING CO., M. E. (Milton E. Moss et al. doing business as, etc.)----- | 467 |
| MUNK, EUGENE----- | 183 |
| MURIEL CO., THE (Morris Averbach doing business as), ET AL----- | 330 |
| NACHMAN SPRING-FILLED CORPORATION----- | 197 |
| NATIONAL SILVER CO----- | 74 |
| <i>New Yorker Cosmetic Corporation.</i> ----- | 487 |
| NORWOOD PHARMACEUTICAL CO., INC----- | 178 |
| NURITO CO----- | 24 |
| ODORA CO----- | 315 |
| OLD HICKORY MILLS ET AL----- | 187 |
| PAUL F. BEICH CO----- | 442 |
| PHYSICIANS TREATMENT AND ADVISORY CO. (Battle Creek Appliance Co., Ltd. doing business as) ET AL----- | 381 |
| PROGRESSIVE EDUCATION SOCIETY, INC., ET AL----- | 242 |
| <i>Radium Ore Revigator Co., et al.</i> ----- | 489 |
| RAFFY PARFUMS, INC----- | 160 |
| <i>Research Products Corporation.</i> ----- | 486 |
| RITHOLZ, BENJAMIN D. (doing business as Chicago Dentists, etc.)----- | 405 |
| ROSS, B. M----- | 262 |
| <i>S. C. Coumbe Co., et al.</i> ----- | 487 |
| <i>Schuler Chocolate Factory, Inc.</i> ----- | 490 |
| SCHULTZ & HIRSCH CO----- | 192 |
| SCHWARTZ & CO., INC----- | 428 |
| Schwartz & Sons, A. (Abraham Schwartz et al. doing business as)----- | 260 |
| SNYDER & SON, E. (J. Oliver Snyder doing business as)----- | 18 |
| SOUTHERN CRUSHED SHELL CO. (William F. Lorenz, Jr., doing business as)----- | 375 |
| SOUTHERN MILLING CO. (Louis A. Miller doing business as)----- | 225 |
| SPICER CO., INC., THE CHARLES R----- | 107 |
| SUTTON BROTHERS, INC----- | 213 |
| THAYER PHARMACAL CO., ET AL----- | 286 |
| THINSHELL CANDIES, INC----- | 459 |
| TONNIES, HENRY B. (doing business as Landis Medicine Co.)----- | 45 |

| Name | Page |
|-----------------------------------------------------------------------------------------|------|
| Trachtenberg, P. (doing business as Hill Shoe Co.)----- | 260 |
| UCANCO CANDY CO., INC----- | 292 |
| UNITED STATES ENVELOPE CO----- | 237 |
| WALTER H. JOHNSON CANDY CO----- | 303 |
| <i>Weldon-Thomas, Inc., et al</i> ----- | 488 |
| W. T. B. LABORATORIES (Battle Creek Appliance Co., Ltd., doing business as), ET AL----- | 381 |
| ZIEGLER CO., GEORGE----- | 394 |

TABLE OF STIPULATIONS

[Page references having to do with that class of false, misleading, and fraudulent advertising matters dealt with through the Commission's special board, are in *italics*]

| Name | Page |
|-----------------------------------------------------------|------|
| Abell, A. T..... | 682 |
| Ackerman, H. E..... | 504 |
| Adamant Quarry Co., Inc..... | 503 |
| Agee, E. F..... | 524 |
| Alwin Products, Inc..... | 689 |
| Ambrosia Chocolate Co..... | 528 |
| American Drug & Chemical Co..... | 591 |
| American Extension University..... | 530 |
| American Hecolite Denture Corp., The..... | 527 |
| American Home Health Service Laboratories, Inc., The..... | 501 |
| American Jewelry Chain Co., Inc..... | 553 |
| American Polish Co., The..... | 549 |
| American Products Co..... | 563 |
| American Sponge & Chamois Co., Inc..... | 551 |
| American Standard Manufacturing Co..... | 584 |
| American University of Commerce..... | 533 |
| Angora Co..... | 596 |
| Arbor Laboratories, Inc..... | 540 |
| Arcady Laboratories, Inc..... | 559 |
| Arnoldrug Products, Inc..... | 602 |
| Astill Shoe Co., G. W..... | 539 |
| Atlas Sign Works..... | 520 |
| Aurora Jewelry Co..... | 553 |
| Bailey's, Inc..... | 528 |
| Baldwin, Simeon (Molex Co.)..... | 665 |
| B. & G. Candy Co., Inc..... | 546 |
| Battle Creek Drugs, Inc..... | 643 |
| Beasley, Martha..... | 687 |
| Berg and Nathan..... | 529 |
| Berkshire Shoe Co..... | 509 |
| Bernstein Shoe Co..... | 516 |
| Blue Ribbon Shingle Co..... | 535 |
| B. Rosenberg & Sons..... | 519 |
| Bruin Shoe Co., Inc..... | 508 |
| Buckley, Inc., W. K..... | 670 |
| Cai-Jai Co..... | 628 |
| Capassela, Fred (Cai-Jai Co.)..... | 628 |
| Carter, Merville H. (Resinol Chemical Co.)..... | 615 |
| Cashinsky, Abram..... | 534 |
| Casterline Bros..... | 676 |
| Central Petroleum Co..... | 584 |

| Name | Page |
|----------------------------------------------|------|
| Central States Manufacturing Co..... | 594 |
| Chaney Manufacturing Co., The..... | 500 |
| Cherry, J. E..... | 524 |
| Chicago Military Stores..... | 525 |
| Climax Manufacturing Co..... | 552 |
| Cluett, Peabody & Co., Inc..... | 512 |
| Colonial Greetings..... | 589 |
| Commercial Extension University..... | 524 |
| Cromer, Charles W..... | 513 |
| Curcio Co., V. J..... | 540 |
| Daniel Co., John H..... | 523 |
| Danville Knitting Mills..... | 507 |
| Dee's Manufacturing Co..... | 537 |
| DeLugach, Frank..... | 537 |
| Dennis, R. L. (Vitamin Co.)..... | 663 |
| Dermay Perfumers, Inc..... | 540 |
| Director, Murray R..... | 517 |
| D. Jayne & Son, Inc., Dr..... | 674 |
| Drexell Products Corp..... | 581 |
| Dudley Shoe Co., L. B..... | 505 |
| Dunn Lumber Co..... | 548 |
| Dupree Medical Co..... | 692 |
| Durand Shoe Co..... | 509 |
| Economic Shamy Co..... | 534 |
| Elliott Knitting Mills, Inc..... | 530 |
| Emerson Glass Corp..... | 535 |
| England Lumber Co., Fred A..... | 532 |
| Famous Shirt Co..... | 533 |
| Farmers Union Cooperative Produce Ass'n..... | 548 |
| Fay-Cole & Co., Inc..... | 498 |
| Fiedler, Irving..... | 533 |
| Fine Shoe Co..... | 513 |
| Finke, B. F..... | 535 |
| Follmer, Clogg & Co., Inc..... | 512 |
| Food Display Machine Corp..... | 598 |
| Fred A. England Lumber Co..... | 532 |
| Frederick Loeser & Co., Inc..... | 544 |
| French-American Co., The..... | 587 |
| Gadoxin Co..... | 592 |
| Garcia Havana Co., Inc..... | 499 |
| Gartner & Bender, Inc..... | 685 |
| Gay Games, Inc..... | 641 |
| G. J. Wahlers Co..... | 503 |
| "Glick's"..... | 541 |
| Globe Tool & Engineering Co..... | 554 |
| Godwin, Cortlandt..... | 521 |
| Goergen-Mackwirth Co., Inc..... | 564 |
| Golden Peacock, Inc..... | 570 |
| Gray Co., W. F..... | 671 |
| G. W. Astill Shoe Co..... | 539 |
| Hamlin Wizard Oil Co..... | 595 |
| Hanson, John D..... | 537 |
| Hartman, Robert..... | 547 |

| Name | Page |
|-------------------------------------------------------|------|
| Haymes, A. Alfred..... | 519 |
| Health-O-Quality Products Co..... | 657 |
| Heilman, Frank J. (Heils Laboratories)..... | 647 |
| Hess and Clark, Inc., Dr..... | 587 |
| Hough, Charles J..... | 521 |
| I. D. Russell Co..... | 622 |
| I. K. Cut Rate Wholesale Paint & Wall Paper Co..... | 502 |
| Jacoby, R. L..... | 547 |
| Jayne & Son, Inc., Dr. D..... | 674 |
| Jeanne Walter, Inc..... | 590 |
| John H. Daniel Co..... | 523 |
| Kaason, S. A. (Molex Co.)..... | 665 |
| Kahn, Frances E..... | 565 |
| Kaplan, I..... | 502 |
| Kenton Pharmacal Co..... | 681 |
| Kimmel and Marbach Shoe Co..... | 514 |
| King Outfitters, Inc..... | 539 |
| Krawell, F. W..... | 521 |
| Kristee Manufacturing Co..... | 582 |
| Kromel Laboratories..... | 519 |
| Kurlash Co., Inc..... | 555 |
| Lane Brothers Co..... | 508 |
| La Vendor Cigar Co..... | 541 |
| Lawrence Brothers, Inc..... | 543 |
| L. B. Dudley Shoe Co..... | 505 |
| Lebowitz, William K. (Angora Co)..... | 596 |
| Leibowitz, Sidney (National Sales Expansion Co.)..... | 678 |
| Linde Store, Inc..... | 495 |
| Lipault Corp..... | 620 |
| Loeser & Co., Inc., Frederick..... | 544 |
| Longo, Joe D..... | 505 |
| Lux-Visel, Inc..... | 608 |
| Lynch Sales Co..... | 495 |
| Macy & Co., R. H..... | 542 |
| Main, Willard F..... | 511 |
| Mann, Herman L..... | 519 |
| Marshall, Ltd., William L..... | 507 |
| Maybelline Co..... | 622 |
| McConnon & Co..... | 686 |
| McMurdo Silver, Inc..... | 522 |
| Mineral Valley Water Co..... | 605 |
| Molex (Hollywood) Co..... | 665 |
| Moore, E. D..... | 520 |
| Morris, Inc., Norman M..... | 546 |
| Municipal Shoe Co., Inc..... | 517 |
| Muvietan Products Co., Ltd..... | 632 |
| Mystic Brotherhood University..... | 634 |
| National Sales Expansion Co..... | 678 |
| Nicolai-Neppach Co..... | 493 |
| Norma Co..... | 666 |
| Norman M. Morris, Inc..... | 546 |
| Parodney, Abraham (Dupree Medical Co.)..... | 692 |
| Pauker, George..... | 549 |

| Name | Page |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Perfect Manufacturing Co., The..... | 588 |
| Perkey Co., Dr. S..... | 639 |
| Peruna Corp..... | 560 |
| Phoenix Shingle Co..... | 547 |
| Plymouth Rock Shirt Corp..... | 542 |
| Post, Russell L..... | 545 |
| Powell & Campbell..... | 521 |
| Process Corp..... | 621 |
| Procter & Gamble Co..... | 534 |
| Publishers..... 559, 562, 566, 567, 570, 572, 574-576, 580, 581, 584, 598, 610, 611, 613, 614, 619, 623-631, 642, 649-656, 667, 668, 679, 680, 692 | 625 |
| Puro Co., Inc..... | 625 |
| Purodor Manufacturing Corp..... | 577 |
| Pyramid Radio Distributors, Inc..... | 515 |
| Radiwoll Importers, Inc..... | 526 |
| Republic Oil Co..... | 498 |
| Resinol Chemical Co..... | 615 |
| Rex Drug Co..... | 578 |
| R. H. Macy & Co..... | 542 |
| Rice, Inc., William S..... | 494 |
| Ricker, Herman..... | 545 |
| Riddell, Arch C..... | 565 |
| Rit Products Corp..... | 573 |
| Robbins Knitting Co., The..... | 518 |
| Robert, Gaston (The French-American Co.)..... | 587 |
| Rosenberg & Sons, B..... | 519 |
| Rothschild, Milton M..... | 533 |
| Rubens, Joseph W..... | 525 |
| Russell Co., I. D..... | 622 |
| St. Louis Manufacturing Co..... | 583 |
| Salmon, Ross..... | 531 |
| Salsbury's Laboratories, Dr..... | 618 |
| Schwartz, Emanuel..... | 525 |
| Sears, Roebuck & Co..... | 523, 544 |
| Sea-Tone Corp..... | 645 |
| Sherwood Shoe Co..... | 510 |
| Shuford Hosiery Mills..... | 518 |
| Skool Baking Co., Inc..... | 552 |
| Spencer Paper Co., Inc..... | 536 |
| S. Perkey Co., Dr..... | 639 |
| S. S. S. Co..... | 557 |
| Standard Auto & Radio Supply Co..... | 498 |
| Standard Extension University..... | 550 |
| Standard Shoe Co., Inc..... | 510 |
| Stero-Tex Fabrics, Inc..... | 538 |
| Sweets Co. of America, Inc., The..... | 526 |
| Tacit Products, Inc..... | 567 |
| Thistle Engraving & Publishing Co..... | 586 |
| Treatine Laboratories, Inc..... | 611 |
| Truslow Poultry Farm, Inc..... | 550 |
| Tucker & Goodheart Hat Co..... | 543 |
| Van Raalte Co..... | 516 |
| Vitality Mills, Inc..... | 669 |

TABLE OF STIPULATIONS

XV

| Name | Page |
|-------------------------------------------|------|
| Vitamin Co..... | 663 |
| V. J. Curcio Co..... | 540 |
| Wahlers, Gottlieb J..... | 503 |
| Walter, Inc., Jeanne..... | 590 |
| Wander Co..... | 656 |
| Wexler Knitting Mills, Inc..... | 502 |
| W. F. Gray Co..... | 671 |
| Wholesale Poultry Supply Co..... | 531 |
| William S. Rice, Inc..... | 494 |
| William L. Marshall, Ltd..... | 507 |
| Williams, Thomas L. (Maybelline Co.)..... | 622 |
| W. K. Buckley, Inc..... | 670 |
| Wolfe Shoe Manufacturing Co..... | 506 |
| Wright Manufacturing Co..... | 607 |
| Yates, Raymond Francis..... | 532 |

**TABLE OF CASES IN WHICH PETITIONS FOR REVIEW
OF, OR APPLICATIONS TO ENFORCE, ORDERS OF THE
COMMISSION HAVE BEEN FILED IN THE UNITED
STATES CIRCUIT COURTS OF APPEALS FROM APRIL
24, 1934, TO DECEMBER 2, 1934, INCLUSIVE**

| Name | Vol. | Page |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|
| HIRES TURNER GLASS CO ----- Application to enforce filed in Circuit Court of Appeals for the Third Circuit on August 24, 1934. Commission's order affirmed July 11, 1935. Order modified December 20, 1935. | 18 | 69 |
| IRONIZED YEAST CO ----- Petition for review filed in Circuit Court of Appeals for the Sixth Circuit on September 19, 1934. Commission's order af- firmed June 3, 1935. Certiorari denied October 14, 1935. | 19 | 128 |
| ARMAND CO., INC ----- Petition for review filed in Circuit Court of Appeals for the Second Circuit on October 8, 1934. Commission's order af- firmed July 1, 1935. 78 F. (2d) 707. Petition for rehearing denied on August 2, 1935. Petition for certiorari denied December 9, 1935. | 17 | 217 |
| MAISEL TRADING POST, INC ----- Application to enforce filed in Circuit Court of Appeals for the Tenth Circuit on November 1, 1934. Commission's order modified and affirmed on May 1, 1935. 77 F. (2d) 246. Modi- fication revised by court on August 28, 1935. 79 F. (2d) 127. | 18 | 30 |

xvii

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, APRIL 24, 1934, TO DECEMBER 2, 1934

IN THE MATTER OF

DEWITT P. HENRY COMPANY ¹

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

Docket 1818. Complaint, May 3, 1930—Order, Apr. 24, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture of candy and candy products, and sale of certain assortments thereof in interstate commerce, to cease and desist from selling the same, together with explanatory display cards for retailers' use, through certain lottery schemes, under which (1) ultimate chance purchaser of one of the chocolate-covered penny candies making up one of said assortments, or of the last piece therein, receives, without charge, a larger piece or article of merchandise, (2) purchaser of certain individually wrapped bars of candy pays from 1 cent to 3 cents, depending upon the price tag enclosed with the particular bar making up such assortment, and, (3) purchaser of one of the 5-cent, individually wrapped bars making up the third assortment, receives a larger piece or box of candy, depending upon his selection of a bar with which there is enclosed a printed slip, or purchase of the last piece in such assortment.

Mr. Henry C. Lank for the Commission.

Mr. W. Parker Jones of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to

¹ See 18 F. T. C. 269, 276 et seq. for description of the large group of candy lottery findings and/or orders made by the Commission as of April 3, 1934, in which the Commission found, among other things, that the use of such lottery schemes induced many of the consuming public to purchase the products of those using such plans, in preference to the products of competitors, because of the chance of securing candy or other merchandise free of charge or at a particularly favorable price, put competitors who did not use such practices to a disadvantage and diverted trade from them to those using such methods, encouraged gambling, especially among children, resulted in the merchandising of a chance instead of candy, provided retailers with the means of violating the laws and public policy of many of the States in selling and distributing candy through such methods, injured the industry, and restrained and impaired freedom of fair and legitimate competition therein.

create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that DeWitt P. Henry Company, 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 Pennsylvania, 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 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 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 candy.

(a) 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 of candy, and/or articles of merchandise, which larger pieces of candy or article 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 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 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 afore-

said 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.

(b) Certain of said assortments of candies consist of a number of candy bars of a 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 pieces 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 cent, 2 cents, or 3 cents, and these are the prices which the consumer pays the retail merchant. The ultimate consumers thus procure pieces of candy of uniform size, shape, and quality at a price of 1 cent, 2 cents, or 3 cents, 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 a uniform size, shape, and quality together with a number of larger pieces of candy and/or boxes of candy, which larger pieces of candy and/or boxes of candy are to be given as prizes to the purchasers of said bars of candy in the following manner:

Each of said bars of candy is contained within a wrapper and within the wrapper of a small number of these bars of candy are slips of paper which have printed thereon the prize to which the purchaser of that particular bar is entitled. The said bars of candy of uniform size, shape, and quality in said assortments retail at the price of 5 cents each, but the purchasers who procure one of said candy bars containing a printed slip are entitled to receive and are to be given free of charge one of the said larger pieces of candy and/or boxes of candy hereinbefore referred to. The purchaser of the last bar of said 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 said larger pieces of candy or boxes of candy heretofore referred to. The aforesaid purchasers of said candy who procure a bar containing a printed slip and the purchaser of the last bar of candy in said assortments are thus to procure one of the said larger pieces of candy or boxes 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, which display cards bear a legend or statement informing the prospective purchaser that the said assort-

ments 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 candies of respondent's said competitors because of (a) the chance of obtaining said larger pieces of candy or articles of merchandise free of charge, or, (b) the chance of obtaining one of said pieces of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or, (c) the chance of obtaining one of the larger pieces of candy or boxes 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 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 3d 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 June 6, 1930, respondent filed its answer to said complaint. Respondent has now offered for filing a substituted answer dated April 14, 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 Sec-

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Order

tion 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, Dewitt P. Henry Company, 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 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) 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.

(5) 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 tickets within the wrappers thereof, together with larger bars of candy, or boxes of candy, which said larger bars of candy, or boxes of candy, are to be given as prizes to the purchaser procuring a bar of candy containing within the wrapper a ticket calling for such prize.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(7) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the

sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining by the ultimate purchaser of a piece of candy with a particular colored center, that a larger piece of candy, or other article of merchandise, will be given free to said purchaser.

(b) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1 cent, 2 cents, or 3 cents, depending upon the price tag enclosed in the wrapper of the bar of candy selected by the purchaser.

(c) That upon the obtaining by the ultimate purchaser of a bar of candy containing a particular ticket within the wrapper thereof, that a larger bar of candy, or box of candy, will be given free to such purchaser.

(d) That upon purchasing the last piece or bar of candy in the package or assortment, a larger piece of candy, or an article of merchandise, or a box of candy, will be given as a prize.

It is further ordered, That the respondent, Dewitt P. Henry Company, within 20 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.

Syllabus

IN THE MATTER OF
THE ADAMS PAINT COMPANY

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

Docket 1961. Complaint, June 18, 1931—Order, Apr. 24, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale and distribution of paints and paint products in commerce, to cease and desist, as in such order specified and qualified, from directly or indirectly making or causing to be made any false representations, statements, or assertions, in its advertising or otherwise, to the effect that—

- (a) Its products contain no inert material or titanox, barium sulphate, siliceous matter, calcium carbonate, or asbestine but are composed wholly or principally of white lead, zinc oxide, or linseed oil and/or a secret ingredient not generally known to the trade or competitors, discovery of which by its chemists, after years, constituted one of the greatest discoveries of the twentieth century, and gave its said products superior qualities and advantages, not otherwise available, and its chemists test every gallon of paint and/or material used, and its said paints have stood up under the severest kinds of tests for years;
- (b) It manufactures its said products, or owns, operates, or controls factory or other equipment or facilities for so doing, and sells and distributes the same direct from the manufacturer, without the intervention of middlemen, at factory prices, which are less than those at which comparable products may be had or purchased from competitors or retail stores, or through other channels, with savings amounting to \$1 or \$2 a gallon, or 40 percent, accruing to purchasers, unless and until, as long as its products are made by a certain company, which directly or indirectly owns or controls its stock, it fully and prominently disclose such facts and relationship in conjunction with such representations, assertions and statements;
- (c) Its factory is a million-dollar one, or it is a million-dollar corporation, long engaged in the manufacture or sale of paints and paint products, with a million-dollar business, and that manufacturing equipment, or factory buildings depicted or referred to, belong to or are operated by it, or bear its name, and that it maintains and operates a chemical laboratory and staff, which tests every gallon, etc., as aforesaid, and it has facilities for purchasing and storing required raw materials in large quantities, and does so purchase and store; and
- (d) It has used and successfully tested the roof coating dealt in by it for many years, and such product is fireproof and will withstand 1,200 degrees of heat without having its serviceableness impaired or destroyed.

Mr. Henry Miller for the Commission.

Complaint

19 F.T.C.

Squire, Sanders & Dempsey and *Mr. Samuel Doerfler* of Cleveland, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Adams Paint 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 the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Adams Paint Company, is a corporation organized in the year 1924 and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Cleveland in said State. It is and for more than three years last past has been engaged in carrying on and conducting, in general competition, the business of selling and distributing paint, painting materials and liquid roof coating to the purchasing and consuming public throughout the United States by the methods and means as in this paragraph set forth. Respondent advertises, offers for sale and sells its said merchandise (a) through and by means of advertisements thereof published by it from time to time in newspapers, magazines, and similar periodicals of general circulation among the purchasing public throughout the United States and in various sections thereof; (b) through and by means of salesmen and agents who, in respondent's employment and on its behalf, offer its said merchandise for sale to, and solicit purchase orders therefor from, customers and prospective customers, the purchasing public, throughout the various States of the United States; and (c) through and by means of other advertising matter or trade promotional literature, to wit, catalogs, circulars, letters, pamphlets, leaflets, and similar printed or written matter, in which respondent advertises, represents, and describes its business and merchandise, and offers said merchandise for sale, and which advertising matter it causes to be sent and distributed from time to time from its place of business in Cleveland, Ohio, to its salesmen and agents, and to its customers and prospective customers throughout the several States of the United States. In response to and as a result of respondent's aforesaid advertising, solicitation and offering for sale of its merchandise, numerous pur-

chasers throughout the various States of the United States are thereby induced to purchase and do purchase said paint, paint materials and roof coating from respondent; and in so purchasing cause their respective purchase orders for said products to be transmitted by mail and by respondent's salesmen and agents and otherwise from their respective points of location in the several States of the United States to, and which orders are received by, respondent at its place of business in Cleveland, Ohio. Pursuant to said purchase orders for its merchandise and in making distribution thereof to its customers, respondent causes the respective parcels or lots of its paint, paint materials and roof coating so sold by it and purchased by its customers to be shipped, transported, and delivered from Cleveland, Ohio, in, through and into the State of Ohio and the various other States of the United States to the respective purchasers thereof residing or domiciled in such several States. In carrying on its said business respondent maintains and has maintained a constant current of commerce in its said merchandise between the State of Ohio and other States of the United States. In the course and conduct of said business respondent is and for more than three years last past has been engaged in interstate commerce, and in direct active competition therein with many individuals, partnerships and other corporations which are and for many years last past have been engaged in the business of selling and distributing to the purchasing public competitive paints, paint materials, and roof coating in commerce in, between, and among the several States of the United States.

PAR. 2. In and through the means and methods used by respondent in advertising, offering for sale, and selling its paints, paint materials, and roof coating, as hereinabove set forth, and for the purpose and with the effect of inducing and causing the purchasing public to purchase said merchandise from it, respondent causes, and during and throughout a period of more than three years last past has caused, to be made to the purchasing and consuming public certain representations, statements and assertions of the following effect and purport:

(1) That respondent's exterior house paint contains only such raw materials or ingredients as are the finest that money can buy and the best ingredients known to the paint manufacturing industry for the manufacture of exterior house paint; that respondent's said paint is the very best grade and quality of paint that can be manufactured regardless of cost or ingredients used; that the pigment of said exterior house paint, exclusive of necessary coloring material, is composed wholly of white lead, zinc oxide, and a secret in-

redient; that the nonvolatile part of the vehicle or liquid portion of said paint is pure linseed oil; that said paint contains, and that said so-called secret ingredient is, a secret paint ingredient and is therefore not generally known or available to the paint manufacturing industry or to respondent's competitors; that said so-called secret ingredient was discovered by respondent's chemists; that respondent's chemists spent five years in making such discovery; that said so-called secret ingredient is one of the greatest discoveries of the twentieth century and gives to respondent's paint superior qualities and advantages which purchasers cannot procure in the use of any paints of other manufacturers.

(2) That respondent is the manufacturer of said merchandise which it markets, and in its sale and distribution thereof acts as a manufacturer and not as a middleman or dealer; that it owns, operates, and controls a large modern paint factory and grinding and mixing machinery or vats and other manufacturing facilities and equipment in and by which it manufactures all of its paints and other products which it sells and distributes; that its paint factory is a million-dollar factory, and that it owns and operates manufacturing equipment and facilities of the value of \$1,000,000; that its factory consists of a large building or buildings as shown in pictorial representations in its advertising matter, and that such buildings or premises bear in large and conspicuous letters respondent's name "The Adams Paint Company";

(3) That respondent maintains and operates an up-to-date chemical laboratory with a staff of chemists; that every gallon of its exterior house paint is tested in its own laboratory; that chemists in respondent's employ test in such laboratory the purity and quality of the raw materials purchased by respondent and used by respondent in the manufacture of its merchandise; that respondent's exterior house paint has stood up under the severest kind of tests for twenty-two years; that respondent owns and operates the facilities for, and is in a position to obtain the advantages to be derived by, purchasing in large quantities the raw materials from which its merchandise is manufactured; that it does purchase said raw materials in large quantities, to wit, in ten to twenty carload lots.

(4) That respondent is a million-dollar corporation; that it has carried on and conducted its aforesaid business since the year 1906 and has been engaged in business and in manufacturing paint and liquid roofing for more than twenty years, to wit, twenty-four years, twenty-five years, twenty-six years; that respondent does an annual business in its said merchandise to the extent of a million dollars or

more; that it sells over a million gallons of paint a year, and that its business is the largest of its kind in the United States.

(5) That its prices at which respondent sells its said merchandise are factory prices or manufacturer's prices and are not dealer prices or the prices of a dealer; that its said prices do not include, contain, or embrace any costs, profits, or other charges or expenses of any middleman or of any wholesaler, jobber, retailer, broker, traveling salesman, or dealer, and that respondent's customers, by purchasing from respondent, save to themselves such costs, profits or other charges; that therefore its prices for its paint are 40 percent less, and from \$1 to \$2 per gallon less, than the prices at which similar paints of as good quality may or can be purchased by the public from, or are sold to the public by respondent's competitors and by paint dealers generally.

(6) That respondent's roof coating, designated Griptite, is sold and intended by respondent for use and application on, and for the repair of, old and leaky roofs of all kinds, to wit, metal, shingle, and composition, and that when applied to such roofs will without necessity of reapplication render such roofs waterproof, weather-proof and impervious to wind, snow, sleet, and rain, for a period of ten years; that said roof coating in the actual service of the consuming public has given, and will give satisfactory service for a period of ten years on the purposes and uses for which it is intended and sold by respondent; that said Griptite has been in use and successfully tested for 26 years; that said Griptite is fireproof to the extent that about 1,200 degrees of heat will not impair or destroy it or otherwise affect its serviceableness.

PAR. 3. The truth and facts in relation to said statements, representations and assertions are and have been as follows:

(1) Respondent's exterior house paint is not of the best grade or quality manufactured and sold to the public in the United States, but is inferior thereto and contains large and substantial proportions of inferior and low grade or quality paint ingredients, to wit: barium sulphate, siliceous matter, calcium, asbestine, and other similar low grade paint ingredients, aggregating in excess of 30 percent of the pigment portion of said paint. The use in respondent's paint of said inferior and low-grade paint pigments has the effect of cheapening said paint and reducing and lowering the quality thereof. The nonvolatile portion of the vehicle of said paint is not pure linseed oil but contains liquids other than linseed oil. The said paint does not contain any paint ingredient which is "secret" or unknown or unavailable to paint manufacturers generally and to the paint manufacturing industry. All of the ingredients of respondent's said paint

have been discovered and were known to and used as paint ingredients by the paint-manufacturing industry for many years prior to their use in respondent's paint, and no ingredient of said paint was discovered by respondent or by any chemist or other person in respondent's employ or in any other way connected or affiliated with respondent. No chemist is or has been employed as such by respondent, and respondent has not nor has any chemist or other person in its employ spent five years or any other time in making discovery of any such so-called "secret" ingredient or of any other ingredient of respondent's paint. Respondent's said paint does not derive any advantage, benefit or good qualities from any "secret" paint ingredient. Respondent's said paint has not stood up under the severest kind of tests, or under any other kind of test, for twenty-two years. Respondent does not own or maintain, nor has it at any time owned or maintained a testing or other laboratory; nor has every gallon of its exterior house paint been tested in a laboratory of respondent or elsewhere by or for respondent. Respondent does not and has not tested or employed any chemist or other person to test the raw materials from which the merchandise in which it deals are manufactured.

(2) Respondent is not the manufacturer of said merchandise which it markets, and in its sale and distribution thereof does not act as a manufacturer, but it purchases said merchandise from another corporation or other corporations and in the sale thereof acts as and is a dealer and middleman; respondent does not own, operate, or control any paint factory, grinding or mixing machinery or vats or other manufacturing facilities or manufacturing equipment of the value of \$1,000,000 or of any value whatever; nor does it own, operate or control the factory or manufacturing facilities in or by which its said merchandise is manufactured; nor does it own, operate, or control factory buildings or manufacturing equipment or facilities pictorially represented in its advertising matter, as above alleged; nor do any such buildings or other buildings so pictorially represented bear the name "The Adams Paint Company."

(3) Respondent does not maintain or operate a laboratory or a staff of chemists for paint research or testing purposes or other purpose. Respondent does not purchase, store, or use in large quantities or other substantial quantities raw materials from which the merchandise in which it deals are or have been manufactured; nor does respondent have the means facilities and equipment for such purchase, use or storage of such raw materials.

(4) Respondent has carried on and conducted its business only since the year 1924. It has not been in business or conducted any business whatsoever prior to the year 1924, and has not been in busi-

ness or conducted any business since the year 1906 or for more than twenty years as represented. Respondent's business does not amount to \$1,000,000 annually. It has not sold and does not sell a million gallons of paint a year, but the amount of its annual business and the number of gallons of paint sold annually is substantially less than a million dollars and a million gallons, respectively. Nor is respondent's business the largest of its kind in the United States.

(5) Respondent's prices at which it sells its said merchandise are not factory prices or manufacturer's prices but are dealer's prices which include elements of costs, profits, or other charges of middlemen, dealers, and traveling salesmen. Respondent's customers in purchasing respondent's merchandise do not thereby save to themselves or avoid costs, profits, and other charges and expenses of all middlemen, wholesalers, jobbers, retailers, brokers, traveling salesmen, or other dealers.

(6) The prices at which respondent sells its said merchandise to its customers are not less by 40 percent or by \$1 to \$2 per gallon or by any substantial sum, than the prices at which similar paints of competing manufacturers and of equal or better quality may be and can be purchased in the open market by such consumers or purchasers.

(7) Respondent's roof coating Griptite has not been proven to last ten years and will not give satisfactory service, for ten years, in the purposes and uses for which it is sold by respondent; and said product when applied to and used on roofs as represented by respondent will not without the necessity of reapplication render such roofs weatherproof or impervious to wind, snow, sleet, or rain, for a period of ten years. Said Griptite has not been used or successfully tested for twenty-six years or at all prior to the year 1924 when respondent began business. Nor will said Griptite withstand heat of about 1,200 degrees; and its serviceableness will not remain unimpaired under the application of such heat to it.

PAR. 4. The said representations, statements, and assertions, as alleged in paragraph 2 hereof, are and have been false, misleading, and deceptive, and are calculated to mislead and deceive and have and had the capacity and tendency to, and do, mislead, deceive, and induce the purchasing public to purchase said merchandise of respondent in and because of the erroneous belief that said representations, statements, and assertions were and are true. Further, said representations, statements, and assertions have and had the capacity and tendency to cause, and the effect of causing, respondent's salesmen and agents to promote respondent's business by using

and to offer for sale and sell said merchandise to respondent's customers under, said representations, statements, and assertions.

PAR. 5. In and through the methods and means used by the respondent in advertising, offering for sale, and selling its merchandise as hereinabove set forth and for the purpose and with the effect of inducing the purchasing public to purchase said products from respondent, respondent causes and for more than three years last past has caused divers and sundry other false, misleading, and deceptive representations, statements and assertions to be made to the purchasing and consuming public of and concerning its business and the merchandise which it sells.

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

PAR. 7. The use by respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the paint, paint materials, and roof-coating business.

PAR. 8. Said false, misleading, and deceptive acts, practices, and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued 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", and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding, and pursuant to Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and

serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

It is now ordered, That in the course of the sale or distribution in commerce, as commerce is defined in said act, of paints, painting materials or roof coating, the respondent corporation, The Adams Paint Company, its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that any such paint, or painting material, exclusive of necessary coloring, matter or dryers, is composed wholly or principally of white lead, zinc oxide, and linseed oil or is composed wholly or principally of such white lead, zinc oxide, linseed oil, and a secret ingredient; or that any ingredient in said paint or painting material is a secret paint ingredient not generally known or available to the paint-manufacturing industry or to respondent's competitors; or that any such so-called secret ingredient was discovered by respondent's chemists; or that respondent's chemists spent five years or any other time in making such discovery; or that any such so-called secret ingredient is one of the greatest discoveries of the twentieth century; or that any such so-called secret ingredient gives respondent's paint superior qualities and advantages which purchasers cannot procure in the use of other paints or of the paints of competitors; or that any such paints or painting materials do not contain inert material, or do not contain titanox, barium sulphate, siliceous matter, calcium carbonate, or asbestine, at all or beyond any certain proportion: unless and until such respective representations, statements, or assertions are true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation is the manufacturer of any of said paints, painting materials, or roof coating; or that it owns, operates, or controls a paint factory, or any other manufacturing equipment or facilities used in the manufacture of said paints, painting materials, or roof coating; or that its customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent cor-

Order

19 F.T.C.

poration to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of any or all middlemen: unless and until respondent becomes the manufacturer and actually owns and operates or directly and absolutely controls such paint factory and manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paints, paint materials and roof coating are manufactured by the Acorn Refining Company, an Ohio corporation, and while the capital stock of the respondent corporation is owned by said Acorn Refining Company or by the stockholders thereof, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Company is prominently made in conjunction with such representations, statements or assertions.

(c) From directly or indirectly making or causing to be made any representation, statement or assertion in advertisements, trade promotional literature or by any other means, to the effect that respondent's paint factory or the factory in which respondent's said products are manufactured is a million dollar factory; or that respondent is a million dollar corporation; or that paint manufacturing equipment or factory buildings pictorially illustrated or otherwise referred to are factory buildings and equipment owned or operated by the respondent corporation; or that such buildings or premises bear respondent's name "The Adams Paint Company" as illustrated or represented; or that respondent corporation itself maintains and operates a chemical laboratory with a staff of chemists; or that respondent's own chemists test each or every gallon of its paints or the materials used therein; or that any of respondent's paint has stood up under the severest kind of tests, or any other test, for twenty-two years or for any other length of time; or that respondent corporation owns and operates the facilities for purchasing or storing in large quantities the raw materials from which its merchandise is manufactured; or that respondent corporation does purchase said raw materials in such large quantities; or that respondent corporation has carried on and conducted its business since the year 1906; or that it has been engaged in the business of manufacturing or selling paints and roof coating for more than twenty years or for any other period of time; or that respondent corporation's annual volume of business in said paints, paint materials and roof coating aggregates or has aggregated a million dollars or more; or that respondent's annual sales of paint aggregate a million gallons

or more: unless and until such respective representations, statements or assertions are true in fact.

(d) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that the prices at which respondent sells its said products are factory prices or manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which the costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paint products of equal quality are available or may be purchased from competitors or from retail stores or through other dealer channels; or that the benefit of any such savings by reason of the elimination of such middlemen accrues to purchasers from respondent; or that such saving is a certain definite amount, such as \$1 or \$2 per gallon, or 40 percent; unless and until respondent owns and operates or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations, statements, or assertions are otherwise true in fact.

(e) From directly or indirectly making or causing to be made any representation, statement or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation has used and successfully tested its roof coating, named Griptite, for a period of twenty-six years or more, or for any definite period; or that said roof coating, Griptite, is fireproof to the extent that it will withstand about 1,200 degrees of heat without its serviceableness being impaired or destroyed thereby; or that it will withstand any similar degrees of excessive heat without impairment of its serviceableness: unless and until such respective representations, statements or assertions are true in fact.

(f) From directly or indirectly making or causing to be made any other false, misleading or deceptive representations, statements, or assertions in the course of the sale or distribution of any of said paints or painting materials.

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

IN THE MATTER OF

J. OLIVER SNYDER, AN INDIVIDUAL, DOING BUSINESS
UNDER THE TRADE NAME OF E. SNYDER & SONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2120. Complaint, Oct. 26, 1933—Order, Apr. 28, 1934*

- Consent order requiring respondent individual, his agents, etc., in connection with the sale of cigars in interstate commerce, to cease and desist from
- (a) Falsely labeling, branding, advertising, or otherwise describing his said product as "Factory Throw-outs", "Factory Left-overs", or by words of similar import, or as having been made from the same kind and quality of tobacco used for higher-priced, higher-grade products, unless the cigars thus designated and described are in fact thrown out, left over, or discarded from factory lots of higher-priced, higher-grade cigars, made with the same kind and quality of tobacco intended for and used in such higher-priced, higher-grade product, or consist of cigars made with the same kind and quality of tobacco used for a product regularly marketed under other brand names and at higher retail prices; and
 - (b) Representing through use of words "Manufacturer", "Producer", or "Maker", or in any other way that it makes or produces the cigars sold and distributed by it, and does not operate as a middleman, and thereby saves all the costs, profits, or other charges of middlemen and thus affords his customers advantages in price, service, and quality not available to purchasers from competing middlemen or other competitors, unless and until he actually owns and operates or directly and absolutely controls the factory or other producing and manufacturing facilities used in the production of all cigars sold or distributed by him under the aforesaid representations, statements, and assertions.

Mr. Henry Miller for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that J. Oliver Snyder, an individual doing business under the trade name of E. Snyder & Son, 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, J. Oliver Snyder, an individual, is and for more than 2 years last past has been engaged in carrying on and conducting the business as hereinafter described under the trade

name of E. Snyder & Son with his place of business at Hampstead in the State of Maryland. The said business engaged in by respondent is and has been the sale and distribution to the purchasing public throughout the United States, including dealers, users, and consumers, of various brands of cigars, which cigars are and have been manufactured for respondent and purchased by him from certain manufacturers regularly engaged in the business of manufacturing cigars in the States of Pennsylvania and Maryland and selling them to dealers and other purchasers. In the course and conduct of said business, respondent causes his cigars to be advertised, represented, described, offered for sale, and sold to the purchasing public throughout the United States by means of newspaper advertisements, circulars, pamphlets, leaflets, and other forms of advertising matter distributed to his customers and prospective customers, as well as through personal solicitation of customers and prospective customers by himself and by his salesmen or agents employed for the purpose. In distributing said cigars to his customers and acting pursuant to purchase orders received and sales made as aforesaid, respondent causes the several parcels or lots of said cigars as and when sold to be shipped, transported, and delivered in interstate commerce from points in the States of Maryland and Pennsylvania, to wit: Hampstead, Md., Dallastown, Pa., and Red Lion, Pa., through and into States other than the States in which such respective shipments originated and the District of Columbia to the respective purchasers thereof in such other States and the District of Columbia. There are and at all times herein mentioned have been various and sundry other corporations, persons, partnerships, and firms engaged in the business of selling and distributing to dealers, users, and consumers, in, between, and among the several States of the United States and the District of Columbia, cigars which have been manufactured or purchased by them and which are and have been competitive to respondent's said cigars. At all times herein mentioned respondent has been and still is conducting his said business and selling and distributing his cigars in direct active competition with such other persons, partnerships, corporations, and firms and with competitors generally throughout the United States.

PAR. 2. Among the cigars sold and distributed by respondent are cigars of a certain type and grade which are and have been extensively and widely marketed by respondent for resale to the consuming public at the rate of 2 cigars for 5 cents, and at other indicated retail prices. As to such cigars respondent has followed for more than 2 years last past and continues to follow the practices of causing them to be sold and distributed in competition in interstate

commerce, as described in paragraph 1 hereof, under brands, labels, designations, descriptions, and representations to the effect that such cigars—

(a) Are “factory throw-outs”;

(b) Are “factory left-overs”;

(c) Are cigars which have been taken from certain factory lots of cigars which were manufactured for sale as higher-priced or higher-grade cigars and with tobacco intended for, and used in, such higher-priced or higher-grade cigars; and

(d) Are cigars which have been manufactured as part of certain cigars of higher type, grade, or quality, regularly marketed under other brand names at higher retail prices.

PAR. 3. Said terms, “factory throw-outs” and “factory left-overs” as used by respondent and as descriptive of cigars sold to the public, are and for many years last past have been used and understood by manufacturers, dealers, and consumers of cigars in the United States as meaning cigars which are being marketed at certain retail prices, but which in fact are cigars that have been manufactured as part of, and with the same kind, grade, type, or quality of tobacco used in, cigars regularly marketed under other or definite brand names and at higher retail prices, such so-called “factory throw-outs” or “factory left-overs” not having been packed or marketed at such higher retail prices under said other or definite brand names because of being part of excess quantities left over or because of slight imperfections resulting in failure of the cigars to pass inspection or for other reasons.

PAR 4. In truth and in fact respondent’s said cigars sold as described in paragraph 2 hereof are not and have not been “factory throw-outs” nor “factory left-overs” as hereinabove defined and as understood by the purchasing and consuming public; nor have said cigars been taken from lots which were manufactured for sale at higher retail prices or as higher-grade cigars, nor manufactured with tobacco intended for and used in such higher-priced or higher-grade cigars; nor were such cigars manufactured as part of cigars of higher type, grade, or quality, regularly marketed under other brand names at higher retail prices. Respondent’s said cigars sold as described in paragraph 2 hereof were made of inferior and low-grade tobacco and were manufactured with the preexisting intention on the part of respondent and of the manufacturer of marketing the cigars to the public at the low retail prices indicated on the commercial containers thereof.

PAR. 5. The said practices and representations of respondent alleged in paragraph 2 hereof are and have been false, misleading,

and deceptive, and their use by respondent has and had the capacity, tendency, and effect—

(a) Of misleading and deceiving the purchasing and consuming public into the erroneous belief that said practices and representations were and are true in fact; and

(b) Of causing dealers and consumers to buy, and dealers to resell, said cigars upon such false, misleading, and deceptive practices and representations.

PAR. 6. Further, respondent is and for more than 2 years last past has been conducting his said business described in paragraph 1 hereof and selling and distributing his said cigars under representations, statements, and assertions to the effect that—

(a) Respondent is the manufacturer of said cigars and sells and distributes the same to his customers as the manufacturer thereof;

(b) That the prices at which he sells his cigars are manufacturer's prices, that they do not include the costs, profits, or other charges of any middlemen;

(c) That in buying from respondent purchasers are thereby dealing directly with the manufacturer and saving to themselves the costs, profits, or other charges of any and all middlemen.

In truth and in fact respondent is not a manufacturer and does not manufacture the cigars which he sells but purchases the same from manufacturers and resells them as a middleman and at middleman's prices, which include the costs, profits, and other charges of himself as well as those of the manufacturer. In the sale and distribution of said cigars respondent does not, by reason of being a manufacturer, save to the purchasers the costs, profits, or other charges of all middlemen.

PAR. 7. The said representations, statements, and assertions used by respondent as described in paragraph 6 hereof are false, misleading, and deceptive, and have and had the capacity, tendency, and effect of misleading and deceiving purchasers into purchasing cigars from respondent in the erroneous belief that said representations, statements, and assertions are and were true in fact.

PAR. 8. Respondent's use of the foregoing false, misleading, and deceptive acts and practices as aforesaid are methods of competition which are unfair and 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 to hamper, burden, or restrain the freedom of fair and legitimate competition in the cigar industry and trade. Said false, misleading, and deceptive acts and practices used by respondent as aforesaid constitute unfair methods of competition in commerce in violation of Section 5

of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued 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", and respondent's amended answer thereto that respondent, desiring to waive all further proceedings, and under paragraph (2) of rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and serve upon him an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter, and being fully advised in the premises,

It is now ordered, That in the course of the sale or distribution in commerce between and among the several States, Territories, and the District of Columbia, or in such Territories or District, the respondent J. Oliver Snyder, his agents, representatives, servants, and employees, do cease and desist:

(a) From directly or indirectly labeling, branding, describing, advertising, or representing any such cigars with the term "factory throw-outs" or "factory left-overs" or with any simulation thereof or word or words of similar import, *unless* the cigars so labeled, branded, described, advertised, or represented are cigars which in fact have been taken, thrown out, left over, or discarded, during or after manufacture, from certain factory lots of cigars manufactured for sale as higher-priced or higher-grade cigars and with the same kind, grade, type, and quality of tobacco intended for and actually used in such higher-priced or higher-grade cigars; or *unless* such cigars so branded, labeled, described, advertised, or represented are in fact cigars which have been manufactured as part of, and with the same kind, grade, type, and quality of tobacco used in cigars regularly marketed or to be marketed under other brand names and at higher retail prices.

(b) From falsely or deceptively advertising, branding, labeling, describing, or representing, directly or indirectly, in any other manner whatsoever (1) that any such cigars sold or distributed in commerce as aforesaid are cigars which have been taken, thrown out, left over, or discarded from factory or other lots of cigars manu-

factured for sale as higher-priced or higher-grade cigars, or (2) that any such cigars so advertised, branded, labeled, described, or represented have been manufactured from the same kind, grade, type, or quality of tobacco used in higher-priced or higher-grade cigars.

(c) From making any representations, statements, or assertions, directly or indirectly, either by use of the words "manufacturer", "producer", or "maker", or by any other means whatsoever, that respondent is the manufacturer, maker, or producer of any such cigars sold or distributed in commerce as aforesaid; or that in the course or conduct of his business respondent is, or operates as, a manufacturer, producer, or maker and not a middleman; or that by reason of being a manufacturer, producer, or maker, or selling and distributing his cigars directly from manufacturer or producer to purchaser he thereby excludes or saves all or a part of the costs, profits, or other charges of a middleman or all middlemen, and thereby affords his customers advantages in price, service, or quality not available to purchasers from competing middlemen or other competitors of respondent; *unless and until* respondent actually owns and operates or directly and absolutely controls the factory or other producing, making, or manufacturing equipment and facilities used in the manufacture or production of all such cigars sold or distributed by respondent under said representations, statements, and assertions.

It is further ordered, That respondent, J. Oliver Snyder, 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.

IN THE MATTER OF
NURITO 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 2084. Complaint, Jan. 13, 1933—Decision, May 7, 1934

Where a corporation engaged in the sale and distribution of a certain medicinal preparation,

Represented the same on cartons and in circulars and newspaper advertisements as a cure and treatment for the relief of neuritis, rheumatism, neuralgia, sciatica, and lumbago, and kindred ailments, through such statements as "Acts like magic, making bed-ridden sufferers get up and dance", "So many thousands have found quick relief from neuralgia, neuritis, sciatica, lumbago, and rheumatism through Nurito, that it has now become the standard relief throughout the world", and numerous others of similar tenor, such as "Now! grandma runs upstairs without an ache or pain", "Runs back to work; yesterday couldn't move aching legs", etc.;

The facts being that while said preparation would temporarily relieve muscular aches and pains, it did not in and of itself have any appreciable therapeutic value in the treatment of neuritis, rheumatism, neuralgia, sciatica, and lumbago, and did not have the proper therapeutic values to produce the results claimed for it, but contained certain ingredients which were liable to produce toxic effects in certain cases and were actually contra-indicated in certain ailments;

With effect of misleading and deceiving customers and prospective customers into purchasing said product in the belief it would produce the results claimed, as above set forth, and with capacity and tendency so to do, and to injure substantially competitors engaged in sale of numerous products having the same action, without falsely advertising the same as a cure for such diseases, or otherwise, and with effect of so doing, through unfairly diverting trade from said competitors to itself:

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. Clinton Robb, 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, an Illinois corporation engaged in the sale and distribution to retail dealers of a medicinal preparation designated "Nurito", and with office and principal place of business in Chicago, with advertising falsely or misleadingly as to the results or qualities of

said 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, on its cartons and in its circulars, newspapers, and otherwise, so describes and advertises the same as to represent falsely and misleadingly that said "Nurito" constitutes an efficacious treatment for neuritis, rheumatism, neuralgia, sciatica, lumbago, and kindred ailments, acting like magic, making bed-ridden sufferers get up and dance, so successful that it has become the standard relief throughout the world, etc.,¹ with capacity and tendency to mislead and deceive retail dealers and the consuming public, and to induce them to purchase the product in question because of their belief in the truth of its said representations and advertisements, and with the effect of diverting trade to respondent from its competitors, and with the tendency so to do, all to the prejudice of the public and competitors.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Respondent filed its answer, and the case was set down for the taking of testimony 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 hearing on the brief of counsel for the Commission and upon the record. No brief was filed on behalf of the respondent. The Commission, now having considered the matter 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, Nurito Company, is a corporation organized under 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 for more than 2 years last past has been, engaged in the

¹ Respondent's advertisements and representations, as alleged and quoted in complaint, are set forth in the findings, *infra*, at pp. 26, 27.

Findings

19 F.T.C.

business of selling and distributing in interstate commerce to retail dealers a medicinal preparation which it designates as "Nurito". Respondent causes said preparation, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof at their respective points of location in the various States of the United States.

PAR. 2. Respondent's product is in powder form and contains the following ingredients in the indicated quantities:

| | <i>Grams</i> |
|----------------------------|--------------|
| Acetyl salicylic acid..... | 7½ |
| Caffeine alkaloid..... | ½ |
| Phenolphthalein..... | ½ |
| Colchicine salicylate..... | 1/400 |
| Sugar milk..... | 4 |

Respondent's directions for taking said powders are as follows:

Take 1 powder followed by a full glass of water, every 3 hours as necessary, gradually reduce to 2 powders a day, 1 in the morning and 1 at night.

PAR. 3. Respondent has represented by advertisements that its product "Nurito" will cure and is a treatment for the relief of neuritis, rheumatism, neuralgia, sciatica, lumbago, and kindred ailments. These advertisements have appeared on its cartons and in circulars and in newspapers published throughout the United States. Among the representations and claims made by respondent in its various advertisements are:

Nurito prescription acts like magic, making bed-ridden sufferers get up and dance;

* * * a physician's prescription for rheumatism, neuritis, neuralgia, sciatica, and lumbago;

So many thousands have found quick relief from neuralgia, neuritis, sciatica, lumbago, and rheumatism through Nurito that it has now become the standard relief throughout the world;

For rheumatism, neuritis, neuralgia, sciatica, lumbago, and other torturing aches and pains the relief is quick and sure;

So certain does Nurito banish sciatica, rheumatism, neuralgia, lumbago, and neuritis * * *;

Now they have found something they can absolutely depend upon to rid them of the pain of rheumatism, sciatica, lumbago, neuralgia, or neuritis, and other torturing aches and pains;

Helpless, bed-ridden, pain-racked, sleepless people from torturing pain are the ones who should try Nurito;

* * * this remarkable prescription that gets the helpless out of bed * * *;

Tells quickest way to stop neuritis;

Kills pain and enables the helpless to get up and walk;

Rheumatics vanish;

Physiological properties—

* * * Intestinal antiseptic eliminant

* * * Bladder antiseptic.

PAR. 4. Respondent advertised its product in newspapers in practically all the large cities of the United States and in some of the small cities. In these newspaper advertisements various representations concerning its product were made, some of which are:

Lucky woman finds relief from neuritis. Neuritis sufferers are positively thrilled with joy at the discovery of Nurito. A doctor was finally induced to put up his famous prescription as a great public benefit. It works like a charm, fast, and powerful * * *.

Rheumatic sings praise for relief. Here's the fast and quick way to get relief * * *. Help, bedridden, pain-racked, sleepless from torturing pains are the ones who should try Nurito.

Now! Grandma runs up stairs without an ache or pain. Runs back to work; yesterday couldn't move aching legs.

Jumps out of bed—Rheumatics vanish. There is no use wasting effort with anything that doesn't stop your pain. And if it does that you know you are going to get well.

Relieves his own mother of neuritis. She is out of bed and on her feet every day now. So certain does Nurito banish sciatica, rheumatism, neuralgia, lumbago, and neuritis that the head of the syndicate which has purchased this German specialist's prescription treats his own mother with it.

Wife wins freedom from neuritis. Couldn't walk for 5 years—Nurito puts her on her feet. Thousands have discovered this magic relief from neuritis, rheumatism, sciatica, lumbago, and neuralgia. Nurito works different than any other treatment in the world.

Tells quickest way to stop neuritis. Kills pain and enables the helpless to get up and walk.

Oh, boy! Rheumatics went like magic. Is able to walk and goes back to work. Those who have tried everything without benefit are finding Nurito the most startling discovery of recent times.

Rheumatic happy; conquers torture. German specialist's prescription amazes hospitals and physicians. So many thousands have found quick relief from neuritis, neuralgia, sciatica, lumbago, and rheumatism through Nurito that it has now become the standard relief throughout the world.

Rheumatic goes wild with joy. Nurito preparation acts like magic making bedridden sufferers get up and dance.

PAR. 5. Respondent's product "Nurito" has an analgesic and anodyne effect when taken in accordance with respondent's instructions. It will temporarily relieve muscular aches and pains, but does not, in itself, have any appreciable therapeutic value in the treatment of rheumatism, neuritis, neuralgia, sciatica, and lumbago. In some mild cases of rheumatism, or simple cases of neuralgia, the use of the above-described powders might relieve the pain, and the disease might subside, with or without treatment, but the said medicines in and of themselves do not have proper therapeutic values to produce the results claimed by respondent.

PAR. 6. Respondent's claims and representations and advertisements as hereinabove recited are false and misleading, and 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. 7. Nurito is an anodyne and antipyretic largely composed of aspirin, and acts on the living human body in a similar manner as other prepared medicines such as Aspirin, Hexine, Colchisal, Diacin, Atophan, and other pain relievers. The colchicine salicylate present has a tendency to increase the analgesic effect. The caffeine and phenolphthalein in it in the dosage indicated have respectively mild diuretic and mild laxative effects. Nurito has a tendency to relieve muscular aches and pains; such aches and pains, which include some types of neuralgia and lumbago, however, usually subside in a few days with or without treatment. There are other types of neuralgia such as trigeminal, and of lumbago, in which Nurito would not relieve the pain. It would tend to relieve the pain of neuritis, including sciatica, but most sciatica is so severe that Nurito would hardly be effective in relieving the pain, though it might relieve the pain in the milder types not severe enough to need much treatment. It would tend to relieve the pain of mild, temporary types of rheumatism. Sciatica and other types of neuritis, as well as lumbago and rheumatism, are commonly merely symptoms, or danger signals, or foci of infection, and Nurito is not a cure or proper treatment for the infections or causes of the pain, but merely a palliative relieving or hiding the danger signals temporarily, and thus might lull the user into a false sense of security.

PAR. 8. Nurito is a dangerous medicine if used by some persons. The phenolphthalein or colchicine present are liable to produce toxic effects, especially in children. Colchicine is contra-indicated in persons with severe heart lesions. Caffeine is also contra-indicated in a great many cases of arthritis, particularly if cardiac disorder is present.

PAR. 9. Nurito is not efficacious in the treatment of neuralgia, neuritis, sciatica, lumbago, or rheumatism generally. These ailments are merely symptoms of other diseases. Nurito affects only the symptoms and does not reach the causes. It is not a standard relief for these ailments throughout the world. It is not a quick and sure relief for the ailments mentioned and does not get sufferers who are afflicted with more than mild types of these ailments out of bed.

PAR. 10. Since this proceeding was commenced respondent has revised its newspaper advertising. The advertising copy now used by respondent contains such statements, among others, as:

She is out of bed and on her feet now.

Walks like youth; no longer suffers from aching legs.

Conquers torture.

Quick-acting Nurito enables her (grandma) to enjoy life again.

Such statements imply that Nurito will cure these ailments and not merely temporarily relieve the pain, whereas Nurito will not relieve all the aches and pains of these ailments but only those of the milder types.

PAR. 11. There are numerous other preparations on the market, and sold and distributed in interstate commerce, that have the same physiological action as respondent's product. The majority of such products are offered and sold in commerce among the States in direct and substantial competition with respondent's product and are not advertised as a cure for the several diseases mentioned and are not otherwise falsely advertised.

PAR. 12. The misrepresentations and 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 prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and briefs of counsel for the Commission, and the Commission having made a report in writing in which is 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

Order

19 F.T.C.

other purposes", and the Commission being fully advised in the premises,

It is ordered, That the respondent Nurito Company, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and selling in interstate commerce or in the District of Columbia the medical preparation now known and designated by it as "Nurito", or any other medical preparation of the same or substantially the same ingredients or composition, shall cease and desist from representing in any manner that the use of said medical preparation, by whatever name or description known, will cure or is a treatment for the relief of neuritis, rheumatism, neuralgia, sciatica, and lumbago.

It is further ordered, That the respondent shall within 60 days after service on 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
THE MACEY COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC.
5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914*Docket 2138. Complaint, Dec. 19, 1933—Order, May 11, 1934*

Consent order requiring respondent corporation, in connection with the offer or sale of furniture in interstate commerce, to cease and desist from directly or indirectly advertising, describing, or designating furniture as walnut, the exposed parts of which, when placed in the generally accepted position for use, have for an outer ply or a face veneer, other wood or woods than walnut, or a combination of walnut with other wood or woods, or whose exposed solid parts consist of other wood or woods than walnut or walnut in combination with other wood or woods, unless such use of other wood or woods than walnut except in marquetry, inlays, or overlays is disclosed by apt and adequate words in immediate connection with the word "walnut."

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 The Macey 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, The Macey Company, has been for several years last past and now is, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Grand Rapids in said State, engaged in the manufacture of sectional bookcases and office furniture, and its sale and transportation in commerce from its said place of business at Grand Rapids in the State of Michigan to purchasers in the various other States of the United States and in the District of Columbia. In the course and conduct of such business respondent has been and is in competition with individuals, partnerships, and corporations engaged in the sale and transportation of such class of furniture in like commerce.

PAR. 2. It has been and is the practice of respondent, in the course and conduct of its business, to manufacture the broad parts, and

the flat parts, of its furniture, such as tops of desks and tops, ends, and fronts of cabinet pieces, from panels of plywood which vary in thickness from 1 to 1 $\frac{5}{8}$ inches. These panels, or so-called plywood, consist of layers of gumwood, chestnut, or other wood of similar grade or adaptable to such use and purpose, attached with glue. Upon the outer layer, where exposed to view in the generally accepted position for use, there is glued a veneer of walnut 1/28th of an inch in thickness. There are in such panels either 3 or 5 layers, including the outer ply or veneer. Solid woods are used in the construction of legs, posts, stretchers, or those parts of the furniture usually known or described as solid parts. It has been and is the practice of respondent to use, in the construction of many articles of such furniture, as the outer ply layer, or veneer, for surfaces exposed to view when the piece of furniture occupies the generally accepted position for use, a wood other than walnut, to wit, laurel, which resembles walnut in appearance.

PAR. 3. Such furniture has been and is offered for sale in the catalog of respondent distributed among dealers, sold, and invoiced by or under the description or designation of "walnut", whether the panels or broad or flat parts of such furniture consist of plywood veneered with walnut or plywood veneered partially with walnut and partially with laurel. Such furniture is so designated as "walnut" without any qualification, disclosure, or indication of any character by means of which dealers have been or are enabled to ascertain or learn that the furniture described or designated as "walnut" is actually furniture consisting of walnut and laurel veneered on other woods. Furniture so described as "walnut" by respondent to its dealers has been and is resold to the consuming public as and for "walnut".

PAR. 4. There have been for many years last past and now are individuals, partnerships, and corporations, competitors of respondent, offering for sale and selling in interstate commerce sectional bookcases and office furniture described or designated as "walnut" which has in fact consisted and now consists of solid walnut, or of plywood whose various plies consist of walnut. There have been and are individuals, partnerships and corporations also offering for sale and selling in competition with respondent sectional bookcases and office furniture consisting of walnut veneered on other woods or on plywood truthfully described and designated as "walnut veneer". There have also been competitors of respondent and there are now competitors of respondent who offer for sale and sell as "walnut" sectional bookcases and office furniture consisting of

walnut veneered upon plywood or other woods and whose outer or surface veneer contains no laurel, and is described as "walnut".

PAR. 5. The above and foregoing practices of respondent have had and have and each of them has had and has the capacity and tendency to mislead and deceive the dealer customers of respondent into the belief that the articles of furniture offered for sale and sold by respondent described or designated as "walnut" are, or such parts of them as are exposed to view when the piece of furniture is in the generally accepted position for use, or their outer ply or surface veneer is, walnut, and to induce the purchase of such furniture in reliance on such erroneous belief.

The offering for sale of such furniture described and designated as stated in paragraph 3 has furnished and furnishes dealers among whom the catalog of respondent is distributed or who receive such description of said furniture from respondent or its agents and solicitors with the means to mislead and deceive the consuming public into the belief that the articles of furniture described by respondent as aforesaid, or such parts as are exposed for view when the piece is in the generally accepted position for use or their outer ply or veneer, consist of walnut.

The above and foregoing practices of respondent have had and have and each of them has and had the capacity and tendency to divert business to respondent from its competitors who offer furniture for sale in interstate commerce truthfully advertised and represented.

PAR. 6. The above and foregoing practices of respondent have been and are all to the prejudice of the public and to the respondent's competitors and have been and are unfair methods of competition in violation of the provisions of Section 5 of the Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard upon the complaint and the amended answer of respondent wherein it waives hearing and right to contest the proceeding and consents in pursuance of the Rules of Practice (III. Answers, par. 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,

Order

19 F.T.C.

It is ordered, That respondent, the Macey Company, its officers, agents, and employees, in connection with offering for sale or selling furniture in interstate commerce, cease and desist, directly or indirectly:

From advertising, describing, or designating furniture as walnut, the exposed parts of which, when placed in the generally accepted position for use, have for an outer ply or a face veneer, other wood or woods than walnut, or a combination of walnut with other wood or woods, or whose exposed solid parts consist of other wood or woods than walnut or walnut in combination with other wood or woods, unless such use of other wood or woods than walnut except in marquetrys, inlays, or overlays is disclosed by apt and adequate words in immediate connection with the word "walnut".

Syllabus

IN THE MATTER OF
CROXON, INCORPORATED, AND A. W. LUBLIN¹

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

Docket 2096. Complaint, Mar. 27, 1933—Decision, May 28, 1934

Where a corporation engaged in the manufacture and sale of certain preparations for the removal of hair, including a cream (for use with which a certain wax preparation is sold), the principal ingredients of which were sodium perborate and commercial zinc peroxide, and a powder, which contained strontium sulphide; in advertising the same in trade magazines and those of general circulation, and in booklets and other forms of advertising material distributed by it,

- (a) Represented that its said cream would kill the hair roots and prevent and permanently destroy hair growth through such statements as "Actually destroys superfluous hair permanently", "Definitely prevents the regrowth of superfluous hair", "Completely destroys both hair and hair root—painlessly—harmlessly—permanently"—facts being there is no chemical or combination of chemicals which, applied to the skin, will permanently remove hair and prevent its regrowth without injuring the skin, and said statements and claims were false, deceptive, and misleading;
- (b) Falsely represented said cream as the result of extended research by doctors, during which sections of human skin were taken from living bodies for purposes of experimentation, "So that the microscope might tell the investigators exactly what was happening to the hair roots, because nothing less than an absolute cure would satisfy them", the facts being no such research or experiments had been conducted and the originator of the product was a chemist;
- (c) Falsely represented said cream as a treatment based on an entirely new principle, through such statements as "A revolutionary product", "Scientists have finally triumphed over this age-old problem", "The principle * * * is entirely new", involving a combination of "gentle chemical reactions" which "dissolves both hair and its roots without injury to the health and vitality of the skin", etc.;
- (d) Represented that it had on file complete records proving the truth of its claims through such statements as "Complete records of their entire research work (i.e., 'the doctors and scientists' who made the cream 'possible') proving every claim, are in our files", facts being it did not have on file records proving the truth of claims and representations as to the efficacy of said cream, and no records were in existence which proved that it would permanently remove hair and prevent its regrowth; and
- (e) Falsely represented that said depilatory powder, which accomplished its results through burning the hair off, was harmless and nonirritating to the skin when used for the removal of hair, facts being that preparation in question would cause irritation, and, if left on the skin too long, would cause inflammation;

¹ Dismissed as to respondent A. W. Lublin.

Complaint

19 F. T. C.

With effect of causing members of the public to purchase the aforesaid products in the belief that such claims and representations were true, to the prejudice and injury of the public and competitors, from whom trade was diverted:

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

Mr. G. Ed. Rowland for the Commission.

Palmer & Serles, 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, Croxon, Inc., a New York corporation engaged in the manufacture and sale of certain depilatory products, and with principal office and place of business in New York City, and respondent Lublin, its president, actively engaged since its incorporation in the management, direction and operation of its business, with advertising falsely or misleadingly as to nature, history and results 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.

Respondents, engaged as aforesaid, in advertising said products, as charged, in trade and other periodicals of general distribution and circulation among women, and in pamphlets sent in response to inquiries from prospective users, and packed and distributed with each jar of its products, falsely and misleadingly represents that its said cream will permanently and completely destroy superfluous hair and prevents the regrowth thereof, is based on an entirely new principle, and was developed through the use of sections of skin from living bodies, and its depilatory powder will remove all objectionable hair in from one to five minutes and is harmless, and that complete research records are on file proving the truth of every claim made for the products in question, facts being said powder, if not used with the utmost care, may burn the skin and cause great irritation and permanent ill effects, and each of the other aforesaid various misrepresentations are also false and misleading.

Said false, deceptive and misleading statements and representations, as alleged, have the capacity and tendency to an do, mislead and deceive the purchasing and consuming public and cause them to buy such products in the erroneous belief that such statements and representations are true in fact, and use thereof constitutes unfair methods of competition which tend to and do prejudice and injure the public, and unfairly divert trade from and otherwise prejudice

and injure competitors, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of marketing depilatory products and other products and appliances adapted to and used for the removal of superfluous hair and other hair from the body; 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 its complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance, and having filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Croxon, Inc., is a corporation organized under the laws of the State of New York, in May, 1932, with its principal office and place of business at 363 Seventh Avenue in the City of New York, State of New York, where it has been engaged, ever since its organization, in the business of manufacturing and selling certain preparations designed for use in removing hair from the human body.

Respondent A. W. Lublin is the president of respondent Croxon, Inc., owner of part of its capital stock, and one of its directors, and has been actively engaged in the management, direction, and operation of the business of said respondent. Said respondent has not been engaged as an individual in the manufacture and sale of any of the preparations distributed by respondent Croxon, Inc.

Respondent Croxon, Inc., sells and distributes the products manufactured by it throughout the United States to wholesale and retail dealers, and causes said products, when so sold, to be transported

from the City of New York, State of New York, through and into the several 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 its said business as aforesaid, respondent has been and is now in active competition with various other persons, partnerships, and corporations engaged in the manufacture and sale in interstate commerce among the several States of the United States, and the District of Columbia, of preparations, products, and appliances designed for the removal of hair from the human body.

PAR. 2. In the course and conduct of its aforesaid business respondent Croxon, Inc., manufactures and sells a preparation in the form of a cream, which it calls "Croxon Cream"; a wax preparation which it calls "Croxon Plastik" and at the time the complaint was issued, and for some time thereafter, a depilatory powder, which it calls "Croxon Depilatory Powder." The last-named product is not being advertised by respondent at the present time and, while it is still sold on specific orders, no efforts are being made to sell it.

The principal product manufactured and sold by respondent is "Croxon Cream." The principal ingredients in this preparation are approximately 16.9 percent of sodium perborate, and 20.7 percent of commercial zinc peroxide, incorporated in a petroleum base. The cream originally was packed in 1-ounce and 3-ounce jars, which sold at retail at \$5 and \$10 respectively; but later it was packed in 2-ounce and 6-ounce jars, which were sold at the same prices. The delipatory powder is packed in 2-ounce glass jars and sold at retail at \$1 per jar. This powder contains strontium sulphide, and accomplishes its results by burning the hair off. The wax preparation "Croxon Plastik", has been sold by respondent since August, 1933, and is packed in 5-ounce packages at a retail price of \$1. A sample of this product is packed with each jar of Croxon Cream. It is intended to be used as an accessory to Croxon Cream.

PAR. 3. Respondent Croxon, Inc., obtained the formulae from which Croxon Cream and Croxon Delipatory Powder are manufactured in April, 1932, by purchase from the director of the department of biochemistry of the New York Post Graduate Medical School and Hospital, who is a chemist and not a doctor of medicine. It was represented to respondent that the formulae had been developed by one of the research workers connected with the hospital as a result of a series of experiments on sections of skin from human bodies, as well as on animals. It was further represented to re-

spondent that a cream produced from one of the formulae would contain no compounds that would be toxic; that it would remove superfluous hair when applied as directed; and that it would prevent the regrowth of hair when applied as directed over a period of a year. After purchasing the formulae respondent made application for letters patent, and entered into a royalty agreement with the research worker who developed the cream. The application for patent is still pending.

Relying on the statements made to it, and without further investigation to determine whether such claims were correct, respondent immediately began manufacturing the cream, prepared advertising material, and sent out salesmen soliciting orders.

PAR. 4. Beginning in June, 1932, respondent advertised its Croxon Cream in magazines having a general circulation throughout the United States, and in trade magazines having a circulation among dealers in toilet articles. Respondent also prepared, and caused to be distributed to the public, booklets and other forms of advertising material making various representations and claims concerning the efficacy of Croxon Cream in removing hair from the human body and preventing its regrowth.

On August 20, 1932, an article appeared in the Journal of the American Medical Association concerning Croxon Cream, in which an analysis of the cream was given, and the statement was made that it was worthless as a means of removing hair and preventing its regrowth. Respondent immediately canceled all its advertising contracts, but the advertisements appeared in certain of the magazines until December. In August, 1933, respondent resumed advertising, and at the time of the hearing in this case it was advertising its cream in one magazine and the rotogravure sections of certain Sunday newspapers in a number of the largest cities in the United States.

PAR. 5. In the advertising caused by respondent to be inserted in the magazines as aforesaid, and in the booklets and other forms of advertising material distributed to the public by it, respondent made numerous claims and representations concerning the said Croxon Cream and Croxon Depilatory Powder. Among such claims and representations in said magazines were the following:

A revolutionary product *Croxon*—the remarkable new cream that actually destroys superfluous hair permanently.

Professional ethics forbid the publishing of the names of the doctors and scientists who made Croxon possible. Complete records of their entire research work, proving every claim, are in our files.

Forever free from ugly hairs on face, neck, limbs, and underarm. Croxon Cream definitely prevents the regrowth of superfluous hair.

Absolutely guaranteed. Now at last the natural beauty of your face, arms, and legs need no longer be blemished by ugly, superfluous hair. For scientists have finally triumphed over this age-old problem and have perfected a remarkable cream that destroys both hair and root—positively, harmlessly, and entirely without pain, hair-pulling, irritation, or unpleasant odor. * * * Croxon Cream destroys the hair faster than it can grow in again and, after a number of applications, the hair root, itself, is actually destroyed and can therefore never grow hair again.

Ugly hairs on face, neck or limbs can grow no more! Absolutely guaranteed.

Why not end, once and for all, the ugly, disfiguring superfluous hair * * * science has at last completely solved the problem of preventing the regrowth of superfluous hair * * * and finally its regrowth is completely checked—so that it will never grow again.

In the booklets prepared and distributed by respondent appear the following statements and representations:

Absolutely guaranteed to harmlessly and permanently destroy wherever applied, both hair and hair root so that hair will never grow there again.

Completely destroys both hair and hair root—Painlessly—Harmlessly—Permanently.

In the research, incident to the development of Croxon, a study was made of all available data together with an examination of the various preparations on the market for the relief of this trouble.

* * * * *

It is unnecessary to go into detail about the thousands of experiments that were made—the many promising avenues that later turned out to be merely blind alleys and the final sacrifice of sections of human skin from living bodies so that the microscope might tell the investigators exactly what was happening to the hair root, because nothing less than an absolute cure would satisfy them.

* * * * *

Croxon is the result of these studies.

The principle underlying the Croxon treatment is entirely new. A combination of gentle chemical reactions dissolves both hair and its roots without injury to the health and vitality of the skin, for they are similar to the reaction constantly taking place in all living cells.

* * * * *

Croxon is the perfect solution to the problem of superfluous hair. It provides a simple, positive and permanent method, guaranteed to harmlessly destroy, wherever used, both hair and hair root, so that no unwanted hair can ever grow there again.

* * * * *

Use the cream steadily for three months and then stop. If any hair grows back again, continue immediately with the Croxon Treatment for an additional three months. In every normal case, that will finish the growth and no hair will ever grow again where you have applied Croxon.

Abnormally strong growths * * * may require still an additional six months treatment before these strong hair roots are completely destroyed.

With reference to Croxon Depilatory Powder appears the following:

This is a dainty, harmless, pleasant and nonirritating product which quickly and easily removes all objectionable surface hair.

PAR. 6. The claims and representations made by respondent concerning Croxon Cream and Croxon Depilatory Powder, set forth in paragraph 5 herein, are false, deceptive, and misleading, because there is no chemical or combination of chemicals which, when applied to the skin of the human body, will permanently remove hair and prevent its regrowth without causing injury to the skin. Four physicians who are specializing in the practice of dermatology testified as witnesses for the Commission. Two of them had been employed by respondent to do research work on patients with Croxon Cream. They conducted a series of tests on women who had superfluous hair on their faces, arms and legs, over a period of months. During the duration of the tests the patients were under observation of the dermatologists, who made examinations of the progress of the treatments at frequent intervals. The cream was applied to the parts of the skin from which it was desired to remove the growths of hair by the physicians and by the patients themselves. Instructions for use of the cream as set forth by respondent were followed. At the end of the period during which the tests were made, covering three to five months with one physician, and eight months with the other, they prepared and gave to respondent written reports containing their conclusions. They found that Croxon Cream would not permanently remove hair from the human body, and would not prevent its regrowth.

Two other physicians of many years experience in the practice of dermatology testified that a cream composed of the ingredients contained in Croxon Cream would not permanently remove hair and would not prevent its regrowth. The physicians called as witnesses by the Commission testified that there were only three methods to permanently remove hair from the human body, which were electrolysis, X-ray and radium, and the latter two methods were dangerous to use.

The Croxon Depilatory Powder manufactured and sold by respondent contains strontium sulphide, which chemical is an irritant to the skin. A preparation containing this chemical, if left on the skin for too long a time will cause inflammation. One physician testified that no preparation containing strontium sulphide can be safely compounded, or directions given, which would avoid the possibilities of burning the skin. All the physicians agreed that such a preparation would cause irritation.

PAR. 7. At the time respondent purchased the formula for Croxon Cream no experiments had been conducted with sections of human skin from living bodies, and no doctors of medicine had made any research in developing the cream. The originator of the preparation was a chemist. Respondent did not have on file records proving the truth of the claims and representations it made as to the efficacy of Croxon Cream, and no records were in existence which proved that the cream would permanently remove hair and prevent its regrowth.

Respondent claims that its Croxon Cream employs an oxidizing agent in accomplishing the removal and prevention of regrowth of hair, and that its results are obtained by oxidation. It introduced testimony to the effect that years ago a woman doctor connected with the University of Bern had used pumice stone and an oxidizing agent and had accomplished a permanent removal of hair growths in many cases. The article in question describes the abrasion of the skin surface with pumice stone as being the principal corrective. The physicians who testified in this proceeding stated the results set forth in the article were incorrect because neither pumice stone by itself, or in combination with an oxidizing agent will permanently remove hair or prevent its regrowth. An oxidizing agent which will destroy hair will also destroy the skin tissues if it penetrates to the hair follicle.

PAR. 8. There are a number of preparations manufactured and sold for the removal of hair from the human body by competitors of respondent. Some of them are in the form of powders and some in the form of wax. Witnesses from two of such competitors testified in this proceeding to the effect that no claims or representations are made in the advertising of their companies that preparations manufactured and sold by them will permanently remove hair and prevent its regrowth. Said companies do represent that the use of their products will retard the regrowth of hair and weaken the hair roots.

PAR. 9. The Commission finds that Croxon Cream will not permanently remove hair from the human body, and will not prevent its regrowth, and that the claims and representations contained in the advertising material inserted in magazines by respondent, and distributed to the public in the form of booklets and other material to the effect that said Croxon Cream will and does permanently remove hair from the human body and prevent its regrowth, and kills the hair root, are false, deceptive and misleading; that Croxon Depilatory Powder is not harmless and nonirritating, but is in fact harmful to use; that Croxon Cream is not based on a new principle;

35

Order

that respondent did not have complete research records proving the truth of all its claims, because no such records exist; and that no extensive research involving the use of skin sections from human bodies was conducted in the development of Croxon Cream.

The use of the aforesaid false, deceptive, and misleading claims and representations by respondent in its advertising literature concerning Croxon Cream and Croxon Depilatory Powder is prejudicial and injurious to the public and respondent's competitors, causes members of the public to purchase said products in the belief that such claims and representations are true, and results in a diversion of trade to respondent from its said competitors.

PAR. 10. Respondent called as witnesses six women who had used its preparation Croxon Cream, and these witnesses testified that said cream had benefited them by the removal of superfluous hair. Three of these women were under observation by the physicians who were conducting research with the cream by direction of respondent. The other three were not under observation of any physician. Two of said witnesses were employees of respondent, and another one was supplied with the cream free of charge by respondent in exchange for allowing herself to be used for experimental purposes. Four of these women testified that the hair became lighter in color, finer in texture, and was pulled out easier by the use of tweezers. Three of them stated that the hair regrew on the surfaces treated. Two women testified that they had used the cream and that the hair disappeared entirely and had not grown back. Neither of these witnesses had been under the care and observation of a physician, and in each case the growth of hair to which the cream had been applied was blond in color and of a very light growth.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the testimony taken and briefs filed herein, and the

Order

19 F. T. C.

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, Croxon, Inc., its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce and in the District of Columbia, of depilatory preparations and other products designed and intended to remove hair from the human body, do cease and desist from:

(1) Advertising or representing in any manner that Croxon Cream, or any cream or other preparation containing as its principal ingredients sodium perborate and commercial zinc peroxide:

(a) Will permanently remove hair from the human body when used over any period of time;

(b) will prevent the regrowth of hair;

(c) will permanently destroy the hair and hair root;

(d) is the result of extended research by doctors, during which sections of skin were taken from human bodies, when such is not the fact;

(e) is a treatment based on an entirely new principle.

(2) Advertising or representing in any manner that it has on file complete research records proving the truth of every claim made for Croxon Cream.

(3) Advertising or representing in any manner that Croxon Depilatory Powder, or any powder or preparation containing strontium sulphide, is harmless and nonirritating to the skin when used for the removal of hair.

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

ORDER OF DISMISSAL

This proceeding coming on to be heard by the Commission on the complaint of the Commission, the answer of the respondent, the testimony and briefs of counsel for both sides; and the Commission being fully advised in the premises:

It is now ordered, That the complaint as to respondent A. W. Lublin be, and the same is hereby, dismissed.

Complaint

IN THE MATTER OF

HENRY B. TONNIES, DOING BUSINESS UNDER THE
NAME AND STYLE OF LANDIS MEDICINE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2162. Complaint, Feb. 8, 1934—Order, June 4, 1934*

Consent order requiring respondent individual, his agents, etc., in connection with the sale, offer for sale, or distribution in interstate commerce and the District of Columbia, of the medicinal preparation known and designated as "Special Prescription Tablets" and also described as "Special Prescription" and "Landis' Special Prescription", or of a medicine of the same or essentially the same composition under any other name or names, to cease and desist from representing or implying that said preparation is a cure, remedy, or competent and adequate treatment for high blood pressure or that it is a cure, remedy or treatment for the various bodily ailments and conditions that cause high blood pressure.

Mr. Harry D. Michael 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 Henry B. Tonnie, doing business under the name and style of Landis Medicine Co., 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. That said respondent, Henry B. Tonnie, is the sole owner and manager of the business conducted by him under the name and style of Landis Medicine Co. That respondent has owned and conducted said business since July 1, 1931, and has his office and place of business in the city of Cincinnati, in the State of Ohio.

PAR. 2. That said business so owned and conducted by respondent consists in the sale and distribution in interstate commerce of various medicinal preparations among which is one known and designated as "Special Prescription Tablets", and also variously described as "Special Prescription" and "Landis' Special Prescription." That respondent in the course and conduct of his said business causes his said products, including said "Special Prescription Tablets", to be

transported in interstate commerce from his said place of business in Ohio to, into, and through States of the United States other than Ohio to various members of the consuming public to whom they are or have been sold. That respondent usually sells his said products directly to the purchasing public by mail.

PAR. 3. That 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 designed, intended, and used for the same general purpose as respondent's said "Special Prescription Tablets", and also other preparations designed, intended, and used for the treatment of the various bodily ailments that produce the condition for which respondent's said medicine is advertised as a remedy 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 the origin of the shipment thereof. Said respondent has been, during the aforesaid time in competition in interstate commerce in the sale of its said preparation with such other individuals, firms and corporations. Said competing products are sold in some instances direct to the consumer and in other instances to wholesale and retail druggists for ultimate resale to members of the public.

PAR. 4. Respondent, in advertising his said "Special Prescription Tablets", causes advertisements to be inserted in magazines and other publications circulated to the purchasing public in the various States of the United States and also distributes form letters, advertising circulars, and folders by mail to prospective customers in various States of the United States, which said advertisements, form letters, advertising circulars, and folders represent or imply that said "Special Prescription Tablets" constitute a cure or remedy for high blood pressure or that it will relieve such condition regardless of the cause. Respondent, in advertising his said preparation as aforesaid, causes advertisements to be inserted in magazines or other publications, an example of which is as follows:

Blood Pressure is often the cause of head pains, heart palpitation, hot flashes, numbness, hard breathing, dizziness, sleeplessness, nervousness. Send for Free Booklet explaining causes, symptoms, and treatment simply and inexpensively; also testimonials. Write today to J. R. Landis, 134 Mary Lane, Cincinnati, Ohio.

To those who answer such advertisements as the above, respondent sends by mail various form letters, advertising circulars and folders containing many statements and representations as aforesaid in regard to such preparation, among which are the following:

. . . Our Special Prescription for the relief of High Blood Pressure . . .

. . . We have come to the conclusion that our prescription discovery will help in over 95 out of every 100 cases . . .

. . . Landis' Special Prescription is just what the name implies, a Specific Formula for the Relief of High Blood Pressure. In preparing this medicine only one thought was kept in mind; to produce the best combination possible for the complaint . . .

Special prescription for high blood pressure. Will help to relieve the pains and discomfort, reduce the pressure, and assist in restoring a normal condition. As high blood pressure often leads to apoplexy, paralytic stroke, and other dangerous complications, action should not be delayed.

. . . The fact that the remedy is selling in increasing volume year after year leads us to believe that it has outstanding merit, and is worthy of your full consideration . . .

. . . If you are sick and ailing we know that this good doctor's prescription will help you, just as it has relieved hundreds of others . . .

Special Prescription Tablets—This special prescription for the relief of the discomforts of High Blood Pressure is successfully used in the reduction of high arterial tension. . . .

. . . Dizzy spells, hot flashes, headache, nervousness, and shortness of breath, are the result of the overworked heart. The Special Prescription Tablets are a very effective medicine for this serious ailment, and this medicine may be depended upon to give excellent results.

Treatment—The first thing to do is to reduce the pressure on account of the danger involved. Our Special Prescription is designed to do this. Not so many years ago very little was known about treating High Blood Pressure . . . Our remedy (the prescription of a physician) comprises a combination of therapeutic agents carefully selected for their usefulness in bringing about relieved and improved conditions in cases of hypertension of the arteries, commonly called High Blood Pressure . . .

and others of like import, some of which are contained in testimonials reproduced by respondent in its said advertising literature.

PAR. 5. That, in truth and in fact, respondent's said medicine is not a competent and adequate cure, remedy or treatment for high blood pressure and is not a cure, remedy or treatment for high blood pressure regardless of the cause thereof or for the various bodily ailments and conditions that cause the same, but is adapted only for use in cases brought on by temporary causes where temporary relief is desired by lowering blood pressure temporarily. That all of said statements, representations and implications are either wholly beyond the therapeutic effects of said medicine or are greatly exaggerated or wholly inaccurate.

PAR. 6. That the representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said medicine is a cure, remedy or competent and adequate treatment for high blood pressure; that it is a cure, remedy, or treatment for high

Order

19 F. T. C.

blood pressure regardless of the cause thereof and for the various bodily ailments and conditions that cause the same; when in truth and in fact such are not the facts or only to a limited extent. That said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy 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 medicines of the same or similar kind and of those adapted and used for the treatment of the various ailments and conditions that produce high blood pressure.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 8th day of February, 1934, issued its complaint against Henry B. Tonnies, doing business under the name and style of Landis Medicine Co., respondent herein, and caused the same to be served upon him as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On February 23, 1934, said respondent filed herein an answer in writing to said complaint. Subsequently, said respondent filed herein a petition to withdraw its said answer and asking that a new answer therewith submitted be filed in lieu thereof, which said petition was granted by the Commission and said new answer was accordingly filed. By said new answer respondent elected to refrain from contesting this proceeding and consented to the issuance of an order to cease and desist from the practices set forth in the complaint herein.

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:

Order

It is ordered, That respondent, his agents, employees, or successors, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of the medicinal preparation known and designated as "Special Prescription Tablets" and also described as "Special Prescription" and "Landis' Special Prescription", or of a medicine of the same or essentially the same composition under any other name or names, cease and desist from representing by statements which represent or imply that said preparation is a cure, remedy or competent and adequate treatment for high blood pressure or that it is a cure, remedy or treatment for the various bodily ailments and conditions that cause high blood pressure.

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.

Complaint

19 F. T. C.

IN THE MATTER OF
DREW CORPORATION

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

Docket 2180. Complaint, May 10, 1934—Order, June 5, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale, offer for sale, or distribution in interstate commerce and the District of Columbia of flavoring extracts or other products, to cease and desist from the use of any word or words, statement, picture, or other means of representation, which represents or implies that such flavoring extracts or other products are imported or are prepared, compounded, and packaged abroad and imported into this country when such are not the facts.

Mr. Harry D. Michael for the Commission.

Mr. Joseph W. Landes, of New York City, for respondent.

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 Drew Corporation has been and 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Drew Corporation, 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. That said respondent, Drew Corporation, is now and has been engaged for more than five years last past in the business of compounding flavoring extracts and other products, and in the sale thereof to retail dealers located in various States of the United States other than New York for ultimate resale to members of the purchasing public. That said 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 the buyers thereof to whom or to which they are, or have been sold.

PAR. 3. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are, and have been engaged in the manufacture, sale, and distribution in

interstate commerce of flavoring extracts of the same general kind as those compounded and sold by respondent as aforesaid, 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 flavoring extracts with such other individuals, firms, and corporations.

PAR. 4. That respondent furnishes counter display cartons to purchasers of its said flavoring extracts for use in displaying the same to the purchasing public. That upon said display cartons the following expression appears in large and conspicuous lettering:

Imported Flavors

That upon the bottles in which said extracts are displayed and sold, respondent causes labels to be affixed upon which is the following wording:

Imported for
Drew Corporation
546 Pearl Street New York

That said bottles further bear labels upon which is imprinted a reproduction of what appears to be a coat of arms with the following wording thereunder:

Milano Exporto Chémico

That all of said representations indicate and imply to members of the public that said extracts are prepared, compounded, and packaged abroad and imported into this country.

PAR. 5. That in truth and in fact, said products are not imported and are not prepared, compounded, and packaged abroad, but are prepared, compounded, and packaged by respondent in this country at its place of business in New York. That said representations and implications are untrue and are not founded on the true facts.

PAR. 6. That the representations of respondent, as aforesaid, have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said preparations are imported and are prepared, compounded, and packaged abroad when in truth and in fact such is not the case. That many members of the purchasing public prefer to buy imported merchandise and labor under the belief that goods produced abroad are superior to those produced in this country, said belief prevailing especially in regard to extracts and the like. That said representations of respondent have the tendency and capacity to induce members of the public to

buy and use its said products because of the erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of flavoring extracts of the same general kind and of those intended and used for the same purposes as those of respondent.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the tenth day of May, 1934, issued its complaint against Drew Corporation, respondent herein, and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On May 22, 1934, said respondent filed herein an answer in writing to said complaint, 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.

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 respondent, Drew 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 flavoring extracts or other products, cease and desist from the use of any word or words, statement, picture, or other means of representation, which represents or implies that such flavoring extracts or other products are imported or are prepared, compounded, and packaged abroad and imported into this country when such are not the facts.

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
CALIFORNIA ALFALFA PRODUCTS COMPANY

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

Docket 2067. Complaint, Oct. 15, 1932—Order, June 12, 1934

Consent order requiring respondent corporation, its agents, etc., in connection with the advertising, offering for sale and sale, in interstate commerce, or in the District of Columbia, of Alvita A. M. Tablets, Alvita Tablets, Alvita Tea, and Alvita Extract, to cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that Alvita A. M. Tablets, Alvita Tablets, Alvita Tea, and Alvita Extract, used separately or collectively—

- (a) Have therapeutic value or effect in the treatment of disease, sickness or ailments of the human body; or that
- (b) The use of said products is approved by leading or other physicians or health authorities, will assure pep, vim, vigor, or vitality, will neutralize or eliminate excess acid from the system, will produce milk or act as a general tonic in maternity cases, will purify the blood, build tissue, neutralize acids and ferments, will clear muddy complexions, banish eruptions or act as a general or other tonic, will rejuvenate the system, or restore a rundown condition, or aid digestion, or assist any organ of the human body to function properly.

Mr. E. J. Hornbrook and *Mr. Everett F. Haycraft* 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 California Alfalfa Products Co., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, California Alfalfa Products Co., is a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business in the city of Pasadena in said State. It is engaged in the manufacture and sale of food products under the trade name of "Alvita", in which products alfalfa is the principal ingredient. These products are called by respondent Alvita A. M. Tablets, Alvita Tablets, Alvita Tea, and Alvita Extract. These products are sold in the

different States of the United States to health food stores, which stores in turn sell them to the consuming public. When orders for such products are received by respondent such orders are filled by packing said products in the city of Pasadena, State of California, and shipping the same to the said health food stores into and through States other than the State of California to the respective places of business of said health food stores. It is the claim of respondent that these products have healthful and therapeutic value and effect.

PAR. 2. In the course and conduct of said business, respondent is in competition with individuals, copartnerships, and corporations likewise engaged in the transportation and sale between and among various States of the United States of foods, drugs, preparations, and mechanical devices, used for the same purposes as respondent's said products.

PAR. 3. In aid of the sale of said products respondent supplies said health food stores, for distribution among their said customers, cartons, folders, booklets, pamphlets, testimonials, and other printed material, in which the purported virtues of said products are set forth. Said cartons, folders, booklets, pamphlets, testimonials, and other printed matter are distributed among the said customers and prospective customers of said health food stores. Said cartons, folders, booklets, pamphlets, testimonials, and other printed matter contain the following, among other, false and misleading statements and representations:

(1) The use of these said products is approved by leading physicians and Health Food authorities;

(2) These said products, when used as directed, have therapeutic value and effect in the treatment of many diseases and ailments of the human body;

(3) The use of Alvita products will assure the user thereof of pep, vim, vigor, and vitality;

(4) Alvita Tea is a proven remedy which assists in neutralizing and eliminating the excess acid from your system;

(5) An eminent dietician has proven that Alvita Tea is practically infallible as a milk producer and general tonic in maternity cases;

(6) Vitamin B obtained from alfalfa is successful in diabetes;

(7) Alvita Tea being especially heavy in potassium, iron, sodium, and magnesium. This makes it a great blood purifier, tissue builder, and neutralizer of acids and ferments;

(8) It is especially beneficial to those suffering from acidosis, irritating urine, bladder and prostate gland trouble;

(9) For clearing muddy complexions, banishing unsightly eruptions, and acting as a general tonic, it is unsurpassed;

(10) Alvita tablets are a treatment for rejuvenating your whole system if you are in a run-down condition caused from kidney or bladder trouble, inability of the stomach to assimilate food * * * or loss of weight;

(11) Alvita products help nature to cure disallments in her own way, by providing the essential minerals for the building of new tissue;

(12) Alvita products supply the minerals in a vegetable and easily digested form;

(13) The mineral and vitamin contents of Alvita products are recognized by physicians, dieticians, and other eminent health authorities;

(14) Thousands tell of bladder weakness, lack of pep and general run-down condition yielding quickly to Alvita Tea and Alvita tablets;

(15) It (Alvita Tea) aids digestion, eliminates the wastes, beautifies the complexion, and assists all the organs of the body to function properly.

(16) Arrangements of statements purporting to have been made by doctors of medicine, chemists, and the laity, in such manner and in such juxta-position as to appear to be the endorsements of respondent's said products, when in fact they are not.

PAR. 4. The aforesaid use by respondent of the statements and representations described in the preceding paragraphs hereof, has and has had the tendency and capacity to deceive the purchasing public into the belief that such statements and representations are true and to induce purchasers to buy said products in such belief, and to unfairly divert trade from said competitors to the respondent and otherwise injure them.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of the respondent in which it withdrew its answer herein filed on November 16, 1932, and substituted therefor an amended answer waiving all further proceeding and pursuant to paragraph 2 of Rule III of the Commission's Rules of Practice having consented that the Federal Trade Commission may make, enter, and serve upon respondent an order to cease and desist from the method or methods of competition in said complaint alleged:

It is now ordered, That the respondent, California Alfalfa Products Co., a 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 Alvita A. M. Tablets, Alvita Tablets, Alvita Tea, and Alvita Extract, cease and desist from representing in any manner, including by or through the

Order

19 F. T. C.

use of testimonials or endorsements, that Alvita A. M. Tablets, Alvita Tablets, Alvita Tea, and Alvita Extract, used separately or collectively—

(a) Have therapeutic value or effect in the treatment of disease, sickness or ailments of the human body;

(b) Or that the use of said products is approved by leading or other physicians or health authorities and will assure pep, vim, vigor or vitality, will neutralize or eliminate excess acid from the system, will produce milk or act as a general tonic in maternity cases, will purify the blood, build tissue, neutralize acids and ferments, will clear muddy complexions, banish eruptions or act as a general or other tonic, will rejuvenate the system, or restore a rundown condition, or aid digestion, or assist any organ of the human body to function properly.

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

Syllabus

IN THE MATTER OF
WARD J. MILLER, TRADING AS AMBER-ITA

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

Docket 2103. Complaint, May 4, 1933—Decision, June 12, 1934

Where an individual engaged in the manufacture of a medicine for the cure and treatment of diabetes, and in the sale thereof through druggists, and direct to the consumer, whom he (1) contacted through advertisements in newspapers and periodicals of general circulation, (2) dealt with on the basis of inadequate and inconclusive requests and questions, without requiring blood sugar tests, and (3) supplied with suggestions for treatment and diet which were (a) ineffective and potentially detrimental and dangerous, and (b) made no provision for any variation in the dosage prescribed on the bottle (the sole directions thereon contained, or therewith provided, when sold through druggists), or (c) for medical attention or supervision, or (d) administrations, as required, of insulin, which the scientific world and medical profession had theretofore found and recognized as the most potent and effective agency and treatment for reducing the sugar content of the blood, and through which, as needed, and/or systematic and frequent examination of the patient and regulation of his diet and mode of life, it had theretofore succeeded in controlling said incurable, insidious, dangerous and wide spread disease, and assuring the person afflicted a life of normal activity and duration—

Represented in said newspaper and periodical advertising and through other printed matter and testimonials, that its said medicine constituted an efficacious, complete and proper remedy for said disease, through such statements as "A new preparation that a great many people claim has brought them wonderful results", "Many people who have taken it tell us that the symptoms of the disease disappear, that they are feeling fine, and are eating nourishing food * * * food which diabetics have not been able to eat", etc., "I give Amber-Ita full credit for bringing back my health", "I continued to take Amber-Ita until I had taken eight bottles, at which time I was feeling entirely normal and was eating a normal diet. * * * none of symptoms of diabetes have reappeared", "After taking a total of eight bottles I feel perfectly normal, I have gained several pounds in weight and do all my own housework", "All symptoms of the disease have left me and I feel normal", etc., and included and set forth a report of certain purported tests allegedly made on four diabetics, together with the statement, "The official report of the biologists should be very convincing to you, much time and money have been spent in gathering this material so you may see for yourself what Amber-Ita is capable of doing";

The facts being that members of the laity were incapable of understanding said tests, which were unscientific, unreliable, and misleading, and did not show or tend to show that medicine in question was a cure or proper treatment for diabetes, said medicine did not reduce the sugar content of the blood, or effect sugar metabolism, and did not and could not by reason of the ingredients therein contained constitute an adequate remedy or treatment or tonic for diabetics, and had no therapeutic value of any kind in the

Complaint

19 F. T. C.

treatment thereof, and testimonials in question were without probative value, in that givers thereof supplemented their use of the medicine in question with diet or insulin, or both, and presence of the disease was not shown as an established fact;

With the result of endangering the lives and harming the health of diabetics taking said preparation, either with or without the suggested diet, and postponing the beginning of proper and adequate treatment for the control of the disease, and with tendency and capacity to mislead and deceive purchasers and prospective purchasers of said medicine into the belief that the statements and representations in question were true, and preparation constituted a safe, efficacious and proper treatment for cure of diabetes, and to induce their purchase thereof in such belief, and divert trade from competitors:

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

Mr. E. J. Hornibrook for the Commission.

Jackson, Fitzgerald & Dalm, of Kalamazoo, Mich., and *Holt & Winn*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Ward J. Miller, trading as Amber-Ita hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ward J. Miller, is an individual trading as Amber-Ita, with his principal place of business at 315 North Rose Street, Kalamazoo, Mich. He is now and for several years last past has been engaged at said Kalamazoo in the manufacture and sale of a drug or medicine which he designates as Amber-Ita. This drug or medicine is sold by respondent as a cure and treatment for the disease known as diabetes. It is sold by respondent in the several States of the United States and when orders are received therefor such orders are filled by respondent packing the same in the said city of Kalamazoo and shipping the same from said city to purchasers thereof, many of whom reside in States other than the said State of Michigan.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations likewise engaged in the transportation and sale between and among various States of the United States of medicines, drugs, and treat-

ments sold and used for the same purposes as is respondent's said Amber-Ita.

PAR. 3. In the aid of the sale of the said Amber-Ita respondent advertises in newspapers and magazines of general circulation throughout the United States and in circulars, booklets, letters, and other printed matter sent to its customers and prospective customers through the United States mails and in and through such media makes the following, among other false and misleading statements and representations, as to the merits of said Amber-Ita:

(a) That it will cure and is proper treatment for diabetes.

(b) Sets forth purported testimonials in which it is claimed that the writers thereof have been cured or relieved in cases of diabetes by the use of Amber-Ita.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that (a) Amber-Ita will not cure or aid in the cure of diabetes and is not proper treatment for diabetes; (b) the writers of said testimonials have not been cured or benefited by the use of Amber-Ita in cases of diabetes.

PAR. 5. The aforesaid use by respondent of the statements and representations described in paragraph 3 hereof has and has had the tendency and capacity to deceive the purchasing public into the belief that such statements and representations are true and to induce purchasers to buy said Amber-Ita and use the same in such belief and to prevent such purchasers from procuring proper treatment for diabetes and to unfairly divert trade from said competitors to the said respondent and to otherwise injure them.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 4th day of May, A. D. 1933, issued against and thereafter served its complaint upon the respondent, Ward J. Miller, trading as Amber-Ita, charging him with the use of unfair methods of competition in commerce in violation of

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ward J. Miller, is an individual who trades under the name of Amber-Ita at and from the city of Kalamazoo, in the State of Michigan. He is now 69 years of age and for a period of 33 years, and up until about two years ago, was engaged in the business of selling real estate and the sale of eyeglasses. He is not a physician, has no scientific knowledge of the therapeutic action or value of drugs or medicine. Some time in the year 1924, respondent's brother, John F. Miller, became ill. This illness continued until the year 1930. The said John F. Miller thought he had diabetes and respondent, "following a tip" the source of which he declines to divulge, gathered some plants from the soil of Michigan and therefrom made a medicine, which in the future was to be called Amber-Ita, gave it to his said brother, who after taking 6 or 7 bottles of it maintained that he had become a well man because of the use of it.

From this alleged experience of his brother and noting, so he says, that this plant did not grow on soil adapted to the growing of sugar beets, respondent allegedly became so satisfied with the efficacy of Amber-Ita as a cure and proper treatment for diabetes that sometime in the year 1931 he began to manufacture and bottle it at said city of Kalamazoo and sell it, as a treatment and cure for diabetes, to drug stores and individuals located in several of the cities of the United States, and has continued to so sell it up to the present time. The retail price of Amber-Ita is \$3 for a 16-ounce bottle thereof.

PAR. 2. Respondent in his answer admits the allegations of the complaint as to his being engaged in interstate commerce in the sale of Amber-Ita.

Amber-Ita is shipped, usually through the mails, from Kalamazoo, Mich., to individuals in every State of the United States for use by them as a cure and proper treatment in diabetes. Recently it

has been placed by respondent on sale at retail in drug stores in Michigan, Wisconsin, and Indiana, and the same being resold by said drug stores to individuals for use as a cure and proper treatment for the disease of diabetes. At the time of taking testimony in this matter, negotiations were being carried on by respondent to place it in drug stores of New York City. It is shipped from the said city of Kalamazoo into and through other States of the United States to the places of location of these said individuals and drug stores.

PAR. 3. The allegation of the complaint as to competition is admitted by respondent in his answer.

Insulin is the only medicine or drug recognized by the medical profession as potent and proper in a case of diabetes. Insulin is an extract taken from the pancreas of animals, usually the pig, and sometimes the calf. It sells at retail for 75 cents per 100 units. Some patients will take 10 units a day and some, 100 units. It is administered by injection into the blood stream. It is manufactured in many cities of the United States and shipped to hospitals and drug stores all over the country. Physicians instruct their patients in the use of insulin and authorize them to purchase the same and use it as directed, and they do so. Insulin is sold without prescription direct to the laity in nearly every drug store in the United States. Insulin is in direct competition in interstate commerce in Amber-Ita. Respondent is selling \$4,500 worth of Amber-Ita per year and his business in the sale thereof is now growing at the rate of 16 percent per month. The manufacturers, wholesalers, and jobbers selling insulin in interstate commerce and retailers of the same are now injured by the sale of Amber-Ita and will suffer still greater injury as the sale of Amber-Ita increases.

PAR. 4. Diabetes is an incurable disease. It works insidiously and without proper treatment progresses and may, and often does, result fatally. With proper treatment one suffering from diabetes may live a normally efficient, and the usual span of life. There are approximately 1,400,000 cases of diabetes in the United States.

In the pancreas are what is known as the Islands of Langerhan. Their function is to secrete insulin. This insulin controls sugar metabolism or the handling of sugar in the body. A deficiency of this substance results in increased amounts of sugar in the blood. It is the accepted theory that it is the failure of these Islands of Langerhan to function that results in diabetes. Diabetes manifests itself by excessive thirst, excessive urine, excessive hunger, loss of weight, dizziness, delay in the healing of wounds, susceptibility to infection, weakness, fatigue, itching, boils, ulcers, dryness of skin,

acidosis, at times excessive sugar in the urine and always an excess of sugar in the blood. One may have many of these different symptoms and yet not have diabetes. The only reliable test for diabetes is the test for determining the amount of sugar in the blood. Many have excessive sugar in the urine and still do not have diabetes. In a case of that character, a treatment for diabetes would be dangerous. *A treatment in order to be efficacious in diabetes must lower the sugar content of the blood.*

PAR. 5. Respondent makes and bottles the medicine Amber-Ita at the said city of Kalamazoo in the said State of Michigan. There is nothing on the label of a bottle of Amber-Ita save the name of the medicine and the dosage. There is nothing with or about the bottle to indicate what it is sold for. Purchasers are apprised of its purported virtues in cases of diabetes through respondent's advertising.

In connection with the sale and offering for sale in interstate commerce of the said Amber-Ita, respondent advertised in newspapers and magazines in general circulation throughout the United States, in circulars, booklets, letters, and other printed matter sent to its customers and prospective customers through the United States mails. Typical of this newspaper advertising is Commission's Exhibit 3, which reads as follows:

DIABETES

MUST IT MEAN DIET AND DIE?

If you have symptoms of Diabetes, great thirst, excessive hunger, loss of weight and strength, write for our free booklet setting forth a new and revolutionary theory regarding cause and treatment of Diabetes. No obligation.

Amber-Ita, 315 North Rose St., Kalamazoo, Mich.

The above or similar advertisements have appeared in newspapers of general circulation such as Grand Rapids Press, of Grand Rapids, Mich.; in the Pathfinder and Grit and other magazines of general circulation throughout the United States.

Other advertisements appearing in magazines and newspapers of general circulation throughout the United States read as follows:

IF YOU HAVE

DIABETES

YOU SHOULD CERTAINLY INVESTIGATE

AMBER-ITA

A new preparation that a great many people claim has brought them wonderful results. Amber-Ita may be procured direct or through your nearest dealer.

Fill in the coupon below and mail it today, with a description of your case. It will bring you information of great interest.

Findings

AMBER-ITA 315 NORTH ROSE STREET, KALAMAZOO, MICH.

Please send me information regarding Amber-Ita.

Name _____

Street address _____

City and State _____

If respondent receives response to such advertisements, letters are sent to those responding to them. These letters state in substance that—

many people who have taken it (Amber-Ita) tell us that the symptoms of the disease disappeared, that they are feeling fine, and are eating nourishing food * * * food which, as diabetics, they have not been able to eat, we can refer you to a great many people who have obtained surprising relief after taking their first bottle of Amber-Ita; if you have any symptoms of diabetes, you owe it to yourself to give Amber-Ita a fair trial, we believe you will be surprised and delighted with the result.

A booklet entitled “Diabetes—Must it Mean Diet and Die?” is also sent to all who respond to said magazine and newspaper advertising. It sets forth purported symptoms of diabetes and respondent’s theory of diabetes; suggestions as to treatment of diabetes; a history of the purported remarkable recovery from diabetes of said John J. Miller after taking Amber-Ita, and also of the purported recovery of a Mrs. Max Major and what purports to be a report of tests made with Amber-Ita on four patients alleged to have been afflicted with diabetes; a suggestion that some 20 people whose names and addresses are given and who it is said have taken Amber-Ita for diabetes be written to and asked their opinion as to the efficacy of Amber-Ita; and also so-called suggestions as to diet.

There is also a booklet sent to prospective patients residing in different States of the United States which is represented by Commission’s Exhibit No. 16. This booklet is entitled “Here is the Proof. Sworn Statements of Those Who Have Taken Amber-Ita.” It contains some fifteen purported testimonials, all laudatory of Amber-Ita as a cure or treatment for diabetes. These testimonials were not admitted by the examiner for the purpose of proving their truth but for the purpose of showing the character of respondent’s advertising, and they are here considered by the Commission for such purpose only. These testimonials represent that the users of Amber-Ita have either been cured or relieved of the symptoms of their disease by its use.

The substance of some of them are:

Mrs. LEE GIBBONS:

* * * After taking 10 bottles of Amber-Ita I was feeling perfectly well and all symptoms of my disease have disappeared.

ERNEST W. HOAGUE:

I give Amber-Ita full credit for bringing back my health.

Mrs. ERIC TAYLOR:

I have taken no other medicine or treatment for diabetes since I started using Amber-Ita, and give full credit to Amber-Ita for my return to health.

Mr. JOHN F. MILLER:

I continued to take Amber-Ita until I had taken 8 bottles, at which time I was feeling entirely normal and was eating a normal diet. * * * None of the symptoms of diabetes have reappeared.

Mrs. ELLA MOHNEY:

I am still taking Amber-Ita. I really believe that it saved my life.

Mrs. HATTIE RHODES:

I continued to take Amber-Ita and now after taking a total of 8 bottles I feel perfectly normal, have gained several pounds in weight and do all my own housework.

OSCAR STEWART:

I intend to continue the use of Amber-Ita and I am more than satisfied with the results I have obtained by taking it.

Mrs. ELMER MILLER:

All symptoms of the disease have left me and I feel normal.

There are other similar testimonials in said Exhibit No. 16.¹ All of these testimonials hold out to the purchasers or prospective purchasers that Amber-Ita is a cure and proper treatment for the disease of diabetes.

Webster's Unabridged Dictionary defines the word "cure" as a restoration to health, or an abolishment of disease. Respondent claims in his answer that Amber-Ita is a proper treatment for diabetes.

It is found as a fact that respondent in all of his said advertising holds out to the public that Amber-Ita will cure diabetes, will relieve the symptoms of diabetes, and is a proper treatment for diabetes.

PAR. 6. The following scientific men testified for the Commission:

Dr. Morris Fishbein, a physician, editor of the Journal of the American Medical Association, and who has made a special study of the subject of diabetes.

Dr. Solomon Strouse, a Chicago physician, a specialist in metabolic diseases; connected with the Michael Reese Hospital of Chicago; a writer of books on the subject of diet for the sick.

Dr. Samuel Soskin, a Chicago physician; the director of metabolic research at the Michael Reese Hospital; assistant professor of pathology at the University of Chicago; head of the metabolic clinic of the Michael Reese Dispensaries; specialist in Carbohydrate Metabolism; carried on extensive experimentations with diabetic animals; acting head of the metabolic clinic of the Michael Reese Hospital where all patients with diabetes are treated.

¹ Exhibits not published.

Dr. Charles A. Elliott, a practicing physician of Chicago and a specialist in diagnosis and treatment of diseases, including the disease of diabetes, professor of medicine and chairman of the department of medicine of Northwestern University; has treated approximately 500 cases of diabetes personally.

Dr. Wm. M. LeFevre, a general practitioner of Muskegon, Mich., has specialized more or less in the disease of diabetes and has treated from 150 to 200 cases of diabetes.

Dr. H. D. Lightbody, connected with the Food & Drug Administration of the Department of Agriculture as a biochemist-pharmacologist.

Dr. Lewellys Barker, a physician of 43 years experience in the practice of medicine, successor to Wm. Osler as professor of medicine of the Johns Hopkins University, now professor emeritus of said institution; writer of books on medical subjects, and has treated hundreds of cases of diabetes and had thousands under his observation.

Dr. Paul W. Spickard, a physician and medical adviser with the Food & Drug Administration of the Department of Agriculture.

Dr. Virgil S. McDaniel, a physician and medical adviser of the Federal Food & Drug Administration of the Department of Agriculture.

Hereafter reference will be made only to the names of these said witnesses.

In the treatment prescribed by respondent, a patient receives no instructions except the booklet entitled "Diabetes, Must It Mean Diet and Die", Commission's Exhibits 14 and 15, and the directions on the bottle. The dosage is not varied and each patient controls his own diet. The last page of the booklets, Exhibits 14 and 15, contain the following questions with spaces for answering the same:

What is your age?

How long have you had diabetes?

Do you use insulin?

If so, how many units per day?

Are your feet and legs swollen?

Have you any running sores?

Give any other information you desire.

Upon answers to these questions the medicine is recommended, depending on what the answers are, and patients are asked for urine specimens and urine tests, but these are not always furnished. The medicine is sent regardless of whether or not urine tests are made or reported. Tests for blood sugar are never required.

A correct diagnosis as to whether a person has diabetes cannot be made from answers to the questions recited above the tests of the urine.

In instances of those who buy Amber-Ita from druggists, nothing is said to them by such druggists about tests, they are supplied with no instructions, save the instruction as to dosage on the label of the bottle, they answer no questions as to their condition, and are not supplied by the druggist with Commission's Exhibit 14 or 15.

There are but three methods of treating diabetes which are approved by members of the medical profession. In cases not too far advanced a proper diet often suffices. In many other cases both diet and insulin are prescribed and in still others only insulin is given. The insulin is always injected into the blood stream. This insulin so injected supplies the insulin which the Islands of Langerhan are failing to secrete. No medicine to be taken orally (i. e., through the mouth or other aperture of the body) has yet been found efficacious in the treatment of diabetes, although millions have been expended in an endeavor to find such a medicine. Amber-Ita is to be taken orally only. Some substances have been discovered which will reduce the blood sugar, but which have been proven to be either injurious to the liver or poisonous.

In detail these methods are: first, a thorough physical examination, including an examination and analysis of the urine and a test for blood sugar, and if the patient is found to have diabetes; second, proper diet, regulation of life in general, hygiene and exercise, and finally, in cases that require it, insulin. About half of the cases require insulin. This treatment requires frequent tests for blood sugar and regular observation and advice of skilled physicians. The amount of insulin should be varied from time to time as the tests and observations indicate the necessity therefor. Diet should be regulated in the same way. Insulin in addition to rendering sugar metabolism possible, gradually establishes a greater tolerance for sugar. In the orderly course of successful treatment the amount of insulin is gradually reduced as the assistance to metabolism relieves the handicap and permits nature to strengthen the organs involved. Nothing has been discovered that is as potent as insulin and no other medical treatment is recognized by the scientific world and the medical profession generally.

The services of a physician are not suggested by respondent in the treatment of diabetes when Amber-Ita is used. It is advertised by respondent for use by the laity as a complete, efficacious and proper remedy for diabetes; some suggestions as to diet are made to those purchasing Amber-Ita direct from respondent. This suggested diet will be referred to later.

Diabetes is considered by the medical profession as incurable, but may be controlled and the life of the patient prolonged for its natural duration. Reduction of the blood sugar is an essential

requirement of a proper treatment for diabetes. A medicine to be efficacious in the treatment of diabetes must cause the lowering of the content of sugar in the blood. This is admitted by respondent himself on page 12 of Commission's Exhibit No. 14. It is also testified to by every physician called by the Commission. The use of Amber-Ita does not cause the lowering of the content of sugar in the blood.

Respondent causes to be published a report of purported tests made on four persons alleged to be diabetic who used Amber-Ita. It appears on pages 10 and 11 of Commission's Exhibits 14 and 15, which are booklets called "*Diabetes, must it mean diet and die?*" In connection with this said published report of purported tests, the respondent causes to be published in said booklets the following:

The official report of the biologists should be very convincing to you, much time and money have been spent in gathering this material so you may see for yourself what Amber-Ita is capable of doing.

Members of the laity are incapable of understanding such report.

Dr. Soskin testifies that if the tables therein indicated that Amber-Ita was proper treatment for diabetes they would show a corresponding drop in the sugar in the urine and the sugar in the blood. This they do not show. He concludes that these tests as reported are unscientific and unreliable.

Dr. Elliott, after examining the said report set forth in Commission's Exhibits 14 and 15, concludes that the report is unreliable from the view point of a conclusion to be arrived at to be made as to the result of any form of treatment of diabetes.

It is found that the purported tests reported on pages 10 and 11 of Commission's Exhibits 14 and 15 are unscientific, unreliable and that they do not show or tend to show that Amber-Ita is a cure or a proper treatment for diabetes, but that they have the tendency and capacity to deceive the purchasing public into the belief that Amber-Ita is a cure and proper treatment for diabetes.

Dr. LeFevre was induced by respondent's salesman to give Amber-Ita a trial. He was furnished a case of Amber-Ita by respondent and three of his diabetic patients volunteered to take the treatment. Before beginning treatment he took a record of the blood sugar of each of these patients and began to give them Amber-Ita as directed on the label, which is "Take a tablespoonful after meals each day"; these patients did so. He intended to conduct these experiments for a month, in the meantime watching their blood sugar and the urine sugar each week. At the end of the first week they all returned for their blood-sugar tests and in each case the blood sugar had risen

considerably. He had kept a case record of each of these three patients. He testifies:

So I tried it (meaning Amber-Ita), to determine, if I could, its effect on a diabetic, and this is the effect that it has, apparently, from these three cases: that it raises the blood sugar in the first place, inasmuch as all three of these cases had a higher blood sugar a week after taking it than they did before starting, and it must raise the blood sugar.

Secondly, two of these patients had no sugar in the urine with their highest blood sugar. After taking Amber-Ita a week, had no sugar in their urine, it reveals, in which they always had sugar before, and therefore, my deduction was that some substance in the Amber-Ita apparently raised the renal threshold.

The renal threshold is a level of blood sugar in which the sugar will spill over into the urine. That level, that renal threshold may vary somewhat in different people, but it is relatively constant in the same individual.

My conclusions, therefore, are that the renal threshold is raised by the action of whatever substance is in the Amber-Ita, and this raising of the renal threshold makes it look like it was doing the diabetic some good by reducing a negative urine sugar.

The days of treating diabetes or controlling diabetes by ascertaining the urinary sugar are gone. * * *

At the conclusion of his testimony he was asked the following question:

After having made these experiments, Doctor, what do you have to say as to Amber-Ita being a proper treatment in a case of diabetes?

His answer was:

I don't think it would be safe to continue to give Amber-Ita to a severe diabetic or a moderate diabetic, for that matter, because if you were going to raise the renal threshold, you are eliminating one source the body has of getting rid of the excess sugar, and it will pile up sugar in the blood and produce more work for the pancreas, when you must consider at the same time the pancreas is already damaged. You are throwing more work on it and it will make the diabetic worse. I think it is dangerous and improper.

Through fear for the health of his patients he abandoned the tests with Amber-Ita.

Tests of Amber-Ita were made by the Food & Drug Administration of the Department of Agriculture, in October of 1933. These tests were made by H. D. Lightbody, pharmacologist of that department, upon rabbits which were given Amber-Ita and records of their blood sugar content made and kept during the time they were receiving it. The report of his said tests is to be found in Commission's Exhibits 22, 23 and 24. After an examination of such report, Dr. Spickard was asked whether it (meaning said report) indicated that Amber-Ita is a proper treatment or cure for diabetes. His answer was: "They do not."

Q. Why?

A. As far as I can see from the averages which he has reported, there is nothing to show that it would have any effect on sugar metabolism which is what would be needed in treating diabetes.

Dr. McDaniels testified that the Lightbody report conveyed to his mind that Amber-Ita was not a proper treatment in a case of diabetes and gave as his reason for such conclusion that the results of the tests indicated that the preparation does not affect the blood sugar, and since it does not affect the blood sugar, he would not expect it to be of value in the treatment of diabetes.

Dr. Barker, after having been shown the report testified that the records showed that the taking of Amber-Ita had no effect upon the blood sugar of the rabbits which had been given it. He was asked this question:

What does this report (referring to the Lightbody report) convey to you? Does it show Amber-Ita to be a proper treatment or a cure for diabetes?

His answer was:

It gives no evidence in favor of it. It gives evidence that it does not have any effect upon blood sugar.

Dr. Lightbody testified that his experiments showed that Amber-Ita did not lower the sugar in the blood.

Dr. Fuller, the only witness testifying as an expert for respondent and who conducted experiments with Amber-Ita on four diabetics, said (Dr. Fuller was in the employ of respondent at the time of giving his testimony):

I feel that Amber-Ita would be a proper treatment to use for diabetes if it were used in controlled manner; that is, if other things which should be used hand-in-hand with it are used, as for instance, proper dietary regime, and in severe cases insulin if necessary, because I am firmly convinced by what I have seen of it that it belongs to a group of tonics, having specific value for the diabetic. It would be a proper treatment in the sense that it would not be the only treatment. I do not feel you could say, "here is a bottle of Amber-Ita; your problem is settled." It is not a cure, nor a treatment that will effect a cure, nor a treatment that will effect a complete cure.

Insulin is not prescribed by this respondent, nor is a proper dietary regime suggested by him in conjunction with the use of Amber-Ita. Amber-Ita is not sold or advertised as a tonic. Dr. Fuller was asked this question:

Q. Well, do you think it is safe for a patient, without having the advice of a doctor or direction, to buy a bottle of Amber-Ita and with the information contained in the booklet to treat himself?

A. Not with the information that is contained in this, no. (Referring to the booklet "*Diabetes, must it mean diet and die?*")

Then he was asked:

Q. Doctor, assuming that Amber-Ita is sold to the laity through the druggist without any instructions as to diet, without the booklet, Commission's Exhibit

Findings

19 F. T. C.

14, accompanying it, but in just a plain package, and inside is a bottle of Amber-Ita and the directions say "Take one tablespoon after each meal"; would you say that in all cases with so meager instructions, if followed out, it is a proper treatment for diabetes?

A. Why no, certainly not.

In Commission's Exhibit 14, respondent makes this statement:

Amber-Ita not only removed the sugar from the urine but also reduced the blood sugar. This is the real test for a diabetic preparation.

Later respondent revised Commission's Exhibit 14 and issued Commission's Exhibit 15 with this statement left out. Dr. Fuller testified:

Of course you have insulin for the purpose of burning sugar and it does burn sugar. Of course, if you have a blood sugar of 500 to 550 milligrams you are getting into a definite danger zone.

Q. In that zone the only thing that would help—the only thing that would be proper to administer would be insulin?

A. Not the only thing, but it would be the thing to burn the sugar and to bring it down.

Q. You do not contend that Amber-Ita burns sugar?

A. No, sir.

An analysis of Amber-Ita was made by the Food & Drug Control of the Department of Agriculture. The report of this analysis is set forth in Commission's Exhibit 17. This report shows an unknown quantity of 2/100 of 1%, which the analyst said could not be ascertained unless the name of the plant from which Amber-Ita is made is known. The respondent declined to divulge the name, claiming it a trade secret. Dr. Elliott testified that this unknown quantity was so small that in his opinion it could not have therapeutic value. This report of analysis was shown to physicians who testified for the Commission and after examination thereof they said:

Dr. STROUSE: I see nothing in this chemical report that would indicate any drug that might effect diabetes favorably.

Dr. SOSKINS: I know of no such substance that has been demonstrated to the medical profession which is a proper treatment for diabetes.

Dr. ELLIOTT: Amber-Ita taken one tablespoon after each meal is not a proper treatment for diabetes.

Dr. BARKER: I see nothing in the analysis here to indicate the presence of anything that would have so-called tonic effect as doctors usually speak of tonics. The analysis shows glycerine and invert sugar, both of which would give the liver more work to do. Since Glycerine is a carbohydrate it has to be burned in the way that sugar has to be burned. * * * Glycerine throws an increased burden upon the carbohydrate metabolism. * * * But the burden would be slight. If Amber-Ita does anything, it would increase the blood sugar.

Dr. SPICKARD: There is nothing there (looking at the analysis) that would indicate that Amber-Ita would have a tonic effect. It would not be proper, in

Findings

my opinion, to treat diabetes with a tonic alone. In my opinion Amber-Ita is not a remedy for or a proper treatment for diabetes.

Dr. McDANIELS: In my opinion Amber-Ita is not a proper treatment for diabetes nor a cure for diabetes.

Dr. BARKER, again: Treating a diabetic patient alone with Amber-Ita would not only be dangerous to the patient but if it happened to be a mild case that improves spontaneously, and the patient reported he or she was better, it might influence other diabetics who tend to congregate together to talk over their cases and lead them to neglect very important treatment. I think the use of it alone is a dangerous thing and very pernicious on the ground mentioned. Every diabetic ought to be under the close supervision of a medical man, and the treatment often has to be modified from time to time. Steady control is the secret of successful treatment of diabetic patients. The report of analysis gives no evidence in favor of it as a proper treatment or cure for diabetes. It gives evidence that it does not have any effect upon the blood sugar.

Amber-Ita sold over the drug counter is accompanied by no suggested diet but when respondent makes contact direct with patients, he supplies them, usually through the mails, with a copy of Commission's Exhibits 14 and 15, which are little booklets heretofore referred to and called "*Diabetes, must it mean diet and die?*" These booklets contain suggestions for diet to be used in conjunction with Amber-Ita. As to this suggested diet three of the experts say:

Dr. Fuller, respondent's witness: I do not subscribe to it. It is not safe for a patient to buy a bottle of Amber-Ita and with the information contained in the booklet (Commission's Exhibit 14) to treat himself.

Dr. Strouse:

Q. Doctor, I will ask you to examine Commission's Exhibit 14, under the heading "Our Suggestions Regarding Diet" on pages 14 and 15, and ask you to state whether or no that is a proper diet for all persons in cases of diabetes?

A. I think that dietary advice on that page is as harmful, pernicious and dangerous as any kind of advice that one could give a diabetic patient.

Dr. Soskins: Well, I would say that the diet, as it was shown in there (Commission's Exhibit 14) that it would cover almost anything, and that a patient might very easily take out a very bad or indifferent diet from the very general instructions as shown there. The amounts are not specified and the essence of a diabetic diet is the specification of the amount. The statements are self-contradictory and the advice is so vague in that it is difficult to say anything excepting that it doesn't mean anything. In particular, "eat all you want of the things you know you can eat without injury to yourself." That is very harmful advice.

It is found that the suggestions as to diet contained in Commission's Exhibits 14 and 15, if followed by a diabetic, either with or without the use of Amber-Ita, will not cure or aid in the cure of his diabetes or relieve his symptoms thereof and is not proper treatment for his diabetes and may be detrimental to his health and dangerous to his life.

In addition to Dr. Fuller there was another physician who testified for respondent. He gave no expert testimony. He attended one

patient who had diabetes and who was taking Amber-Ita. He prescribed diet, an approved treatment for diabetes. There was an improvement in the patient's condition. This doctor nowhere makes claim in his testimony that Amber-Ita is responsible for such improvement.

Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on heresay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value.

PAR. 7. The statements and representations of respondent's advertising, described in paragraph 5 hereof, are false and misleading in that they and each of them hold out to the purchasing public that Amber-Ita is a safe, efficacious, and proper treatment and cure for diabetes; while in truth and in fact Amber-Ita is neither a safe, efficacious or proper treatment or cure or tonic in cases of diabetes, nor does it have any therapeutic value of any kind or nature in the treatment of such disease, and its use in such afflictions, either with or without the diet suggested by respondent, is dangerous to the lives and detrimental to the health of the diabetics who take it, and its use postpones the procurement by them of proper and efficacious treatment.

PAR. 8. Each and all of the statements and representations as to the efficacy of Amber-Ita contained in the advertising as set forth in said paragraph 5 and the sale of Amber-Ita through druggists as aforesaid had and have the tendency and capacity to mislead and deceive the purchasers and prospective purchasers of respondent's said Amber-Ita into the belief that such statements and representations were and are true and that Amber-Ita is a safe, efficacious and proper treatment and cure for diabetes, and to induce them to purchase respondent's said Amber-Ita in such belief, and had and have the tendency and capacity to unfairly divert trade from the competitors of respondent to the respondent.

Order

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission on complaint of the Commission, the answer of respondent, the testimony of evidence, and the 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, Ward J. Miller, his agents, employees, and representatives, in connection with the advertising, offering for sale, and sale in interstate commerce, or in the District of Columbia, of the commodity Amber-Ita, or any other product of the same or substantially the same ingredients or compound, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that the use of Amber-Ita in conjunction with diet, or otherwise, constitutes a safe, efficacious or proper treatment for diabetes, or that it will cure or aid in the cure of diabetes, or remove or relieve the symptoms thereof, or that it has any therapeutic value whatever in the treatment of diabetes, or that it is a proper tonic to be used by those afflicted with diabetes.

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

Complaint

19 F. T. C.

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2143. Complaint, Dec. 29, 1933—Order, June 12, 1934

Consent order requiring respondent corporation, its agents, etc., in connection with the advertisement, offer, or sale in commerce among the several States and in the District of Columbia, of silver-plated ware, including teaspoons or other flatware, to cease and desist from using the word, term, or symbol "A-1" as a trade name, stamp, brand, or label, or upon wrappers or containers or in advertising or otherwise, unless and until such silver-plated ware is "full" or "standard" plate, containing in the case of teaspoons not less than two ounces or better of silver to the gross, in the case of dessert spoons and forks not less than three ounces or better of silver to the gross, and in the case of tablespoons and table and medium forks not less than four ounces or better of silver to the gross.

Mr. Marshall Morgan for the Commission.

Brill, Bergenfeld & Brill, of New York City, for respondent.

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 National Silver Company 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 New York, with its principal place of business at 61-65 West Twenty-third Street, in the City of New York, State of New York, and for several years last past has been engaged in the business of selling and distributing to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house furnishing stores, knives, other cutlery and tableware, including such flatware as silver-plated teaspoons. Said respondent causes said knives, cutlery and tableware, when sold by it, to be transported from its principal place of business in the State New York into and through the various other 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 competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware, including such flatware as silver-plated teaspoons, both like and similar to those sold by respondent.

PAR. 2. Through long usage the symbol A-1, when used in association with silver-plated flatware, became to be known and is now known in the trade and by the general public as designating full or standard plate, running two ounces or more of pure silver to the gross, in the case of teaspoons. This amount of silver to the gross, in teaspoons, is the starting point of quality silver-plated flatware, is the minimum amount of silver used by a reputable manufacturer on such flatware bearing their trade name, and is the dividing line between cheap and inferior flatware and quality flatware. Silver-plated flatware below A-1 quality, that is, which contains less than two ounces of pure silver to the gross, in the case of teaspoons, is regarded as being of cheap and inferior grade.

PAR. 3. In the course and conduct of its affairs respondent solicits its business through the medium of traveling salesmen and by catalogs and price lists, which are widely distributed among customers and prospective customers. In the catalog and price list of respondent appears a teaspoon described as follows:

77—Line Windsor Half-Plate
18 percent Nickel silver base, Butler finish

Respondent herein brands this half-plated or half-standard Windsor teaspoon with the symbol A-1, indicating full or standard plate, stamped on each teaspoon. By thus stamping the handles thereof respondent describes and designates such Windsor teaspoons as A-1. Respondent by such misbranding has thereby falsely represented and does falsely represent to the respective purchaser a certain grade of his teaspoons to be such a product known to the trade and general public as full or standard plate, two ounces or better of pure silver plate to the gross; a product of prime, high, superior quality; first rate in grade and in character, when in truth and in fact such grade of teaspoons by respondent so stamped and branded is half-plate, so prepared and appearing as to imitate full-standard plate.

PAR. 4. Apart from and irrespective of the trade meaning and acceptance of the symbol A-1 as shown hereinbefore, the term or symbol A-1, used in a purely adjective, descriptive sense to designate a character or quality of goods, means, implies, and indicates, and is and has been taken by the trade and consuming public to

Complaint

19 F. T. C.

mean, imply, and indicate goods of prime, superior quality, of first rate in grade and character; goods of the highest class.

The symbol A-1 has been used by the respondent herein because it has, by long usage, a definite meaning among the trade and general public in connection with the plating of teaspoons with silver and further because the said symbol in a purely descriptive sense denotes high grade and superior quality.

PAR. 5. Irrespective of whether said Windsor pattern of teaspoon is sold to the trade by catalog advertising half-plate or by traveling salesmen exhibiting teaspoons stamped and branded "A-1", or whether the meaning applying to the symbol A-1 be that of trade origin, usage and acceptance or that of purely descriptive sense, the respondent by selling dealers throughout the United States a half-plate teaspoon stamped and branded "A-1", has by such misbranding placed in the hands of its wholesalers and retailers in interstate commerce the means of deceiving the ultimate purchasers.

The use of the mark or brand signifying full plate on half-plate flatware makes it possible for respondent to undersell competitors and at the same time work deception on the public. The average retailer is governed entirely as to quality by brands and representations, and if he were misled by a false brand would innocently, or if informed might fraudulently, pass the misrepresentation on to the ultimate consumer. Information as to the real character and quality of this half-plate product cannot be imputed to the ultimate buyer, such buyer or consumer not having the knowledge of the original or the intermediary buyer.

By putting this misbranded product bearing a false stamp and brand into the channels of trade, respondent has furnished his customers and those dealing with them with the means to misrepresent the quality of the product, and the trade mark or symbol of "A-1" as employed by respondent tends to deceive the ordinary ultimate buyer of such product into the belief that their purchases were of full, standard plate and of superior quality, when in fact such was not the case, said products being neither full plate nor of high quality, but on the contrary half-plate and of cheap inferior quality.

PAR. 6. Under the foregoing facts and circumstances the stamping and branding by respondent of certain of its products as A-1, as set out in paragraph 2 above, are false and misleading and have the capacity to deceive, and do deceive wholesalers, jobbers, retailers and ultimate purchasers into buying a grade of spoons different from that which they intended to buy, and is placing in the

hands of its wholesaler and retailer in interstate commerce the means of deceiving the ultimate purchasers. The aforesaid practices have and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products of the same kind or nature as those of respondent, which products are truthfully stamped and branded, 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, National Silver Company, 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 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 respondent:

(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 May 29, 1934, respondent filed its answer in which it consented that the Commission might make, enter and serve upon it an order to cease and desist from violations of law alleged in the complaint;

Whereupon, pursuant to its Rules of Practice, the Commission finds that said answer is an admission of all of the allegations of the complaint and a waiver of hearing thereon and authorizes the Com-

mission without trial, without evidence, 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 Company, a corporation, and its 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 silver-plated ware, including teaspoons or other flatware, do cease and desist: From using the word, term or symbol "A-1" as a trade name, stamp, brand, or label, or upon wrappers or containers or in advertising or otherwise, unless and until such silver-plated ware is "full" or "standard" plate, containing in the case of teaspoons not less than two ounces or better of silver to the gross, in the case of dessert spoons and forks not less than three ounces or better of silver to the gross, and in the case of tablespoons and table and medium forks not less than four ounces or better of silver to the gross.

It is further ordered, That the respondent 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 it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

A. G. ASHLEY, TRADING AS CHIC-AMERICAN
DISTRIBUTING COMPANY

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

Docket 2172. Complaint, Apr. 26, 1934—Order, June 12, 1934

Consent order requiring respondent individual, his agents, etc., to cease and desist from representing, directly or indirectly, in advertisements or otherwise in offering for sale and selling his said product, Chic Herb Tea, in interstate commerce and in the District of Columbia; that said product—

- (1) Relieves irritability, headache, loss of energy, skin trouble, coated tongue or bad breath;
- (2) Prevents poisons from forming and entering the blood;
- (3) Acts as a digestant, and aids in the process of digestion and proper eliminations to stop indigestion;
- (4) Is an effective treatment for Bright's Disease, kidney trouble, liver trouble or gall bladder trouble;
- (5) Will reduce the weight, control flesh, strengthen and renew the body or improve the figure; or
- (6) That it, or any product of similar composition, is a competent or adequate cure, remedy or treatment for constipation, indigestion, diseases or afflictions of the kidneys, liver or gall bladder, or is an adequate cure, remedy or treatment for auto-intoxication, or obesity, or that it has any therapeutic properties other than mild laxative, diuretic, carminative or stomachic properties.

Mr. Robt. N. McMillen 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. G. Ashley, trading as "Chic-American Distributing Company", hereinafter referred to as respondent, has been and 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. Respondent, A. G. Ashley, is an individual doing business under the name Chic-American Distributing Company,

with his principal office and place of business in the city of New Brunswick, State of New Jersey. The business done by the respondent now consists and for more than two years last past has consisted in the sale and distribution by him in interstate commerce, of a product, among others, designated by him as "Chic Herb Tea". The respondent, in the course and conduct of his business has caused, and still causes, the said product "Chic Herb Tea" to be transported in interstate commerce from his place of business in New Brunswick, N. J., to, into, and through States of the United States other than New Jersey to various members of the purchasing public to whom it is and has been sold. The respondent has sold, and still sells, the said product "Chic Herb Tea" directly to the purchasing public by and through the use of the mails.

Respondent is now and for more than two years last past has been in competition in interstate commerce with other individuals and with corporations, firms and partnerships engaged in the sale of preparations designed and used for the treatment of diseases and unhealthy physical conditions for which respondent represents said "Chic Herb Tea" to be a remedy. Such other individuals, firms, partnerships, and corporations have caused and now cause the said preparations sold by them to be transported in interstate commerce to, into, and through various States of the United States in which said competitors of the respondent have their respective places and into various States other than those in which they have their respective places of business. Such competing products are sold in some instances direct to the consumer, and in other instances to wholesale and retail dealers for ultimate resale to the purchasing public.

2. The respondent, in promoting the sale of "Chic Herb Tea" now causes and has caused advertisements to be inserted in magazines and other publications circulated throughout the various States of the United States, and has distributed and still distributes advertising circulars by mail to prospective customers in the various States of the United States. In such advertisements and circulars respondent has stated and still states, among other things:

CHIC HERB TEA

The Chic Herb Tea is a special Blend of American and Foreign herbs scientifically prepared to produce the most beneficial results.

Chic Herb Tea Makes You
EAT BETTER—SLEEP BETTER—FEEL BETTER
Start today on the road to health

Complaint

CONSTIPATION

The person who is irritable, who is subject to headaches, loss of energy, has skin trouble, coated tongue, and bad breath—is generally constipated.

Drink Chic Herb Tea after meals and at bedtime thereby assisting the intestines to clear itself regularly, preventing poisons from forming and entering the blood. By preventing this cause you are not subject to colds easily or tire quickly, your food is digested better.

Build up a reserve of health and vitality by drinking this famous blend of herbs.

INDIGESTION

By promoting stomach secretions, aiding the process of digestion and proper eliminations you stop this distressing ailment.

CHIC HERB TEA will help to do all these quickly, efficiently and safely. Start immediately taking Chic Herb Tea.

KIDNEYS, LIVER, AND GALL BLADDER

The inflammations, congestions, or catarrh of these organs, will cause many troubles.

Healthy kidneys pass considerable poisons from the body.

Bright's disease is a form of kidney ailment which progresses very rapidly.

Enjoy health—that is rightfully yours. Chic Herb Tea will aid the kidneys to eliminate the poisons, so that nature can build them back to a normal condition.

Now is the time to start drinking Chic Herb Tea.

The Liver (the great house cleaner of the body) should function properly to gain a sound and healthy body. Chic Herb Tea will aid the liver to function properly. The digestive organs, blood-streams and intestines depend upon the liver for carrying away their waste materials.

Enjoy good health—so that you may feel, eat and sleep better.

AUTO INTOXICATION

This disease is caused by food poisoning due to waste masses clogging the alimentary canal. When the intestines are filled with decayed foods, acrid acids—or toxins are formed. Other parts of the body receives these poisons from the blood absorbing these poisons, causing inflammation, congestions, clogged blood supply. Constipation and fatigue become chronic.

Chic Herb Tea, and the correct habits of living will bring about the proper eliminations. Within a short time you will notice a change that will give you more vitality. Start this healthful treatment today, as time might impair your health.

* * * * *

Complaint

19 F. T. C.

CHIC HERB TEA REGULATES AND TONES THE SYSTEM

CHIC HERB TEA

A scientific blend of beneficial herbs employed
as an aid to the control of flesh

No Rigid diets
rules or drastic exercises
to follow. Two or more cups of
CHIC HERB TEA daily after Meals
and you will be happy, cheer-
ful and normal while
reducing.

Reduce in a Comfortable Sensible
and Healthful Way.

TO CONTROL FLESH

You simply cannot be at your best either in appearance or health if you are overweight. And do not both of these facts mean that you cannot possess the charm that is rightfully, your own?

It applies, not quite so decidedly but still in a definite way, if you are considerably overweight.

It is not necessary to go on a starvation diet—or strenuous exercises to reduce, common sense tells us—that such fantastic ideas are injurious to our body and health.

Is there not a woman today who does not want to stay young and retain that youthful appearance and be charming and fascinating? Of course.

The modern way of reducing today is with Chic Herb Tea. This pleasant herbal mixture will aid in reducing the flesh without discomfort or disturbance of the digestive functions, mildly laxative in nature, and will strengthen and renew the body while assisting it to gradually discard its over abundant tissue. A marked change in that distressing feeling of fullness will be soon noticeable.

Start today, on the road to regaining that grade of figure and movement which can add so much to your charm and happiness.

* * * * *
The Chic Herb Tea way of reducing is simple. Find out your exact height (in stocking feet) then consult the chart for your proper weight.

* * * * *
After you have gained your normal weight start eating any food you like, but continue drinking Chic Herb Tea. Any competent physician will tell you, it is not the food, but the manner in which it is digested that creates superfluous flesh, the gastric juice working the wrong way. Chic Herb Tea corrects this tendency so that the food you eat gives your body only what it needs. Hence there is no more Taking on Fat while the flesh is reduced to normal.

* * * * *
PAR. 3. In truth and in fact, respondent's said Chic Herb Tea is not a competent or adequate cure, remedy or treatment for constipation, indigestion, diseases or afflictions of the kidneys, liver or gall bladder, and is not an adequate cure, remedy or treatment for auto-

intoxication, obesity, or any other unhealthy physical condition. And in truth and in fact said Chic Herb Tea has no therapeutic value nor any properties which will produce beneficial results in the treatment of any human sickness, disease, ailment, infirmity, or any unhealthy condition.

PAR. 4. The representations of the respondent, as set out in paragraph 2 hereof, have had and still have the tendency and capacity to confuse, mislead and deceive the purchasing public into the beliefs that respondent's said Chic Herb Tea is a cure, remedy or adequate treatment for constipation, indigestion, diseases or afflictions of the kidneys, liver or gall bladder, auto-intoxication, obesity and other unhealthy physical conditions, and said representations have had and still have the tendency and capacity to induce the purchasing public to buy said Chic Herb Tea and to use the same because of the erroneous beliefs engendered as hereinabove set forth, and thus to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicines adapted and used for treating the various ailments and unhealthy physical conditions for which respondent represents his said Chic Herb Tea to be a cure, remedy or adequate treatment, and thereby substantial injury is done to substantial competition.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

And now this day comes on for consideration the above matter;

And it appearing to the Commission that the respondent A. G. Ashley, doing business as Chic-American Distributing Company, has filed herein an answer stating that he desires to waive hearing on the charges set forth in the complaint, and refrains from contesting the proceeding, and consents that the Commission may make, enter and serve upon him an order to cease and desist from the violations of law alleged in the complaint, all as permitted by the rules of practice and procedure of the Federal Trade Commission;

And the Commission having considered the complaint and answer and having been fully advised in the premises:

It is hereby ordered, That the respondent, A. G. Ashley, his agents, employees, and representatives, forthwith cease and desist from representing, directly or indirectly, in advertisements or other-

wise, in offering for sale and selling his said product, Chic Herb Tea, in interstate commerce and in the District of Columbia:

(1) That irritability, headache, loss of energy, skin trouble, coated tongue or bad breath are or will be relieved by the administration of the respondent's said product;

(2) That the use of said product will prevent poisons from forming and entering the blood;

(3) That said product acts as a digestant, and aids in the process of digestion and proper eliminations to stop indigestion;

(4) That said product is an effective treatment for Bright's Disease, kidney trouble, liver trouble or gall bladder trouble;

(5) That said product will reduce the weight, control flesh, strengthen and renew the body or improve the figure;

(6) Representing or advertising in any other way or by any other words or statements that respondent's said product, or any product of similar composition, is a competent or adequate cure, remedy or treatment for constipation, indigestion, diseases or afflictions of the kidneys, liver or gall bladder, or is an adequate cure, remedy or treatment for auto-intoxication, obesity; or that said product has any therapeutic properties other than mild laxative, diuretic, carminative or stomachic properties.

And it is further hereby ordered, That the said respondent, A. G. Ashley, shall within 60 days from the date of the service upon him of this order file with this Commission a report in writing setting forth the manner in which he has complied with this order.

Complaint

IN THE MATTER OF
THE LIGHTNING 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 2108, Complaint, July 3, 1933—Decision, June 20, 1934

Where a corporation engaged in the manufacture and sale of a purported electric battery rejuvenator, the ingredients of which in powdered form consisted of Epsom salts mixed with small amounts of alum and glycerine to which was added to the unit quantity in which shipped, a gallon of distilled water and one-half gallon of new sulphuric acid, and which preparation it sold through garage owners, chiefly, by whom it was customarily sold to automobile owners or operators at \$1 or \$1.50 a charge, of which the aforesaid quantity provided five or six—

Represented in advertising said preparation in newspapers and magazines, and in circulars distributed to customers and prospective customers, and by them to automobile owners or operators, that said preparation was a self-charging super electrolyte, which charged batteries instantly, without putting on the "line", or waiting or payment of rentals by customer, made old batteries work like new, and doubled and increased the life thereof, and would charge a totally dead battery and save the cost of a new one, could be set out in the coldest weather and was invented by a famous chemist, and that with a short run, with generator attached, battery would be fully charged, with ample current to turn over the motor, etc.;

The facts being that the ingredients of the powder had no merit, or beneficial effect whatever upon the battery in which used, and the distilled water and sulphuric acid added to make up the liquid constituted the usual mixture for storage batteries, and contributed any virtue possessed by the mixture, and representations were false in every respect, and money expended for preparation was entirely wasted;

With capacity and tendency to mislead and deceive the ultimate consumers of said preparation into the belief that said representations were true, and to induce them to purchase the same in such belief, and to divert trade to it from its competitors, including those dealing in preparations sold for similar purposes, those manufacturing storage batteries or apparatuses used to charge the same, and wholesalers of sulphuric acid when sold for use in such batteries;

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. 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 for more than

one year last past, in the manufacture of a purported electric battery rejuvenator, and in the sale and distribution thereof under the trade name "Lightning Electrolyte", and with principal office and place of business in St. Paul, Minn., 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, in that respondent, in advertising said preparation in newspapers and magazines of interstate circulation, and in circulars, pamphlets, and other printed matter distributed to customers and prospective customers, represents that preparation in question charges batteries instantly, makes old batteries work like new, will partially and sometimes wholly charge a totally dead battery without help of the "line", cleans sulphation from the battery plates and charges the customer's battery while he waits, and makes other representations of similar tenor,¹ the facts being said representations are all false and misleading, and preparation depends for any value it may have, upon the addition of the usual quantity of sulphuric acid contained in the ordinary battery solution, to the powdered form, when so sold, and upon the presence thereof when sold as a liquid, old and worn batteries in which the solution is used can be charged only by the induction of a current of electricity from some other source, and batteries containing product will freeze, contrary to respondent's representation, at temperatures frequently prevailing in various parts of the United States; with capacity, tendency, and effect of misleading and deceiving the purchasing public throughout the United States, and in foreign countries, in which respondent's trade literature is distributed, into purchasing such product in erroneous belief that said representations are true, and that preparation is a new and peculiar product, with qualities above attributed to it, and with further effect of diverting business from competitors, among whom there are those who sell and distribute batteries and battery solutions through truthful and fair representations, and with the tendency so to divert.

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 July, A. D. 1933,

¹ The respondent's representations, as alleged and quoted in the complaint, may be found set forth, *infra*, in the findings.

issued against and thereafter served its complaint upon respondent, The Lightning Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner heretofore duly appointed, testimony was heard, and evidence taken in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on for final hearing, and the Commission having duly considered the record and it now being 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, The Lightning Company, is a corporation organized under the laws of the State of Delaware, with its principal place of business located in the city of St. Paul, in the State of Minnesota. It is now and for more than ten years last past has been engaged in the manufacture and sale of a purported electric battery rejuvenator, and in the sale and distribution of the same under the trade name of "Lightning Electrolyte", causing said product when so sold to be transported from its place of business, or factory, located in the State of Minnesota, to purchasers thereof located in States other than the State of Minnesota. For convenience this product will hereinafter be called Lightning.

PAR. 2. The respondent in the sale of Lightning is engaged competitively in interstate commerce with other persons, copartnerships, and corporations likewise engaged in the sale of preparations for use for the same said purposes as respondent's said Lightning; among which are Battery Life, of St. Paul, Minn.; Battery High Ball, of Gainesville, Fla.; Battery Life Company, of Cleveland, Ohio; Electro, of Indianapolis, Ind.; Electro, of Los Angeles, Calif.; Electro-Life, Detroit, Mich.; Enrich Battery Saver, Cincinnati, Ohio; Let's Go, New Orleans, La.; Misto Lite, Glens Falls, N. Y. Respondent in the sale of Lightning is also in competition in interstate commerce with the manufacturers of storage batteries, the producers of apparatuses used for the purpose of charging storage batteries and with wholesalers of sulphuric acid, when such product is sold by them for use in storage batteries.

PAR. 3. Prior to 1931 respondent's volume of business in the sale of Lightning, as aforesaid, reached the sum of \$65,000 per year. Since 1931 it has amounted to approximately \$200 per month.

Lightning is now and since 1922 has been sold by respondent as a rejuvenator of storage batteries, principally those used in auto-

mobiles. Its customers are mainly the proprietors or owners of garages. It is shipped either by parcel post or express to the purchasers thereof.

Lightning is packed and shipped in two forms: First, because the postal authorities object to receiving it in liquid form, it is shipped by parcel post in powdered form; and, second, it is shipped by express in liquid form, that is to say, "ready mixed" in the proportions hereinafter described. Lightning proper, that is to say, in the powdered form, is made of Epsom salts mixed with small amounts of alum and glycerine. In the liquid form it is mixed with three parts of distilled water and one part of sulphuric acid.

The ultimate consumer of Lightning is generally the owner or operator of an automobile, who buys it from said garage men.

When shipped in the powdered form it is to be mixed by the garage man. A carton of Lightning is to be mixed with one gallon of distilled water and one-half gallon of new sulphuric acid. The garage man drains out the old fluid in the battery and replaces it with Lightning, mixed with the proportions of water and sulphuric acid as aforesaid. The garage man charges the owner or operator of a car a fee for this mixture amounting to \$1.50 in the Western States and \$1 in the Eastern States.

A carton of Lightning bears the price mark of \$2. It actually sells to the garage man for \$1. The cost of the water is 10 cents and that of the acid from 40 cents to 50 cents. A carton of Lightning so mixed will make from five to six charges for a battery. A charge of this acid and water costs not to exceed 12 cents; for this charge, when used with Lightning, the garage man receives from \$1 to \$1.50. In other words, the owner of a car who uses the Lightning mixed with sulphuric acid and water has paid from 88 cents to \$1.38 for the product Lightning.

The product Lightning is entirely worthless for use in storage batteries.

Distilled water and sulphuric acid have long been used as a mixture for storage batteries. Sulphuric acid removes sulphation from the plates of batteries and thereby enlivens, strengthens, and preserves them. New sulphuric acid will often make an apparently dead battery perform its functions. If a battery is completely dead nothing will revive it. Also batteries are re-charged by use of electric currents or "lines" as the term is used in the trade.

If there is any virtue in Lightning mixture it is due to the sulphuric acid and distilled water, and not to Lightning itself. No claim is made in respondent's advertising for the virtue of the sulphuric acid and water, when mixed with Lightning; it is represented

in the advertising of respondent, hereinafter described in paragraph 4, that it is the use of Lightning itself (a mixture of Epsom salts, alum and glycerine) which does the things therein claimed.

PAR. 4. In the course and conduct of its said business, respondent, in soliciting the sale of and selling the said product Lightning, has caused advertisements to be inserted in newspapers and magazines having interstate circulation, among which the Chicago Examiner, the Chicago Tribune, New York papers, and such magazines as the Modern Mechanic, Street and Smith publications and the Pathfinder. Respondent also caused and now causes circulars, pamphlets and other printed matter to be distributed to said garage customers and prospective garage customers located in States other than the State of Minnesota, for distribution by them, and they are distributed by them, to their customers who are owners or operators of automobiles, which contain advertising matter and representations with respect to purported virtues of its said product. Up until the year 1931 respondent was expending in such advertising a sum varying between the amounts of \$3,000 and \$5,000 per annum. Owing to the lack of business, respondent discontinued its newspaper and magazine advertising about the year 1931.

In and through such media the respondent made and now makes the following, among other representations and claims as to the virtues of the product Lightning:

Lightning is the self-charging super electrolyte, Lightning charges instantly, Lightning makes old batteries work like new, Lightning doubles the life of a battery, Lightning will partially, sometimes wholly, charge a totally dead battery without help of the line and saves cost of a new battery, Lightning will charge your battery in your car in from 5 to 20 minutes, Lightning won't freeze, can be set out in the coldest climate.

I have just perfected a brand new plan for you to make money. In the enclosed envelope you will find a small sample of a wonderful chemical which was invented by a famous chemist in 1922. It cleans the sulphation from the battery plates and charges them up by chemical action while doing so. It therefore charges the customer's battery while he waits.

You simply pour Lightning Electrolyte into a discharged battery and same commences to charge instantly. No putting on the line. No waiting for days. No rentals to pay.

Lightning and you become the talk of the town as soon as you take an old discharged battery, pour out the old sulphuric acid and water and then pour in Lightning Electrolyte. You will find instantly you have plenty of current to turn over the motor and the battery is charged fully with a short run with the generator attached as usual.

PAR. 5. Two physicists and electrical technicians of the Bureau of Standards made tests of Lightning for the purpose of determining whether the claims of respondent as to its efficacy were true.

Findings

19 F. T. C.

After mixing the powdered solution of Lightning as directed on the carton, they procured seven batteries for use in these tests. They described these tests in the record as follows:

Having established that these batteries were not capable of starting the car, we then prepared to place in the batteries the solution to be tested. We prepared the Lightning Electrolyte according to the directions * * * using chemically pure sulphuric acid * * * and made up a solution of sulphuric acid without the Lightning. Having prepared the solutions we arranged the batteries in order. * * * Then Mr. Snyder and I flipped a coin to see which solution would go into the first battery and the coin indicating that Lightning should go into the first battery, the Lightning was put in. The battery was immediately placed in the car and we waited ten minutes, timing it carefully by a watch, then we made a test and found no improvement. We allowed this battery to stand over in the laboratory until the next day. The battery did not charge; the motor did not start and the lights were not lit. This battery was called USL.

Then taking up the Delco battery, we put in a solution of sulphuric acid and a corresponding amount of Lightning. We put that in and waited ten minutes, there was no improvement. * * * We allowed that to stand in the laboratory until the next day and then made a reading and found there was no improvement in the condition of the battery.

Those two batteries were dead to all intents and purposes. So far as the starting of the car was concerned, they were not charged by either Lightning or sulphuric acid. We then passed to the three better batteries. Lightning solution was placed in an Exide battery. This battery was placed in the car and we waited until ten minutes had elapsed and we then closed the starter switch on the car and the engine started. I do not regard the fact that the car started after Lightning was put in as being evidence that the battery was charged by Lightning. The same thing can be done with sulphuric acid.

We next placed the sulphuric acid solution in Exide battery No. 4 and we put that battery in the car. We waited ten minutes and then closed the starter switch. There was a partial revolution of the engine as there had been when the battery was first tried, but there was no start. This battery was then put back to the laboratory and the sulphuric acid solution dumped out. Then we put in the Lightning solution. Again we waited ten minutes. Again there was a partial revolution of the engine, but no start. This Exide battery No. 4 was tried with both the sulphuric acid solution and the Lightning solution and in neither case would it start the car. Then we put the sulphuric acid solution in the Moco battery and placed that battery in the car and waited ten minutes, and it started the engine immediately. We repeated it four times. So, we have of the three better batteries, one battery which started with Lightning, one which started with sulphuric acid solution, and one which failed to start with either. Discussing the battery which started when it contained Lightning, the witness has to say:

"The Exide battery No. 5, which contained Lightning, showed under laboratory tests that it ran the longest of any of these batteries. It gave nearly five times as much capacity as any of the others, and therefore we can say that that battery was distinctly superior to the other batteries," meaning that Exide battery No. 5 had more life in it to begin with than the other batteries which were used in the test.

The Moco battery gave 1.2 ampere hours. The Exide battery gave 1 ampere hour. That was the one which failed to start with Lightning or sulphuric acid. Exide battery No. 5, into which Lightning was placed and the battery which started the car gave MM 5.7 ampere hours, so that was in a distinctly superior condition.

The putting of Lightning in Exide battery No. 5 added nothing to the superior condition which we ultimately found. It was a matter of the sulphuric acid in the Lightning solution working its way into the pores of the plates and the same is true of the Moco battery. That also worked its way into the pores of the plates and the battery was enabled to start the car. There was no Lightning solution there.

The next step was to charge the batteries with electric current. They were charged at 12 amperes, which approximates the charging current of an automobile for a period of one-half hour * * * An important improvement in the voltage of these batteries was noted.

We charged the USL battery with a line, i. e., this is the battery which contained the Lightning solution and which had failed to start the car in its original condition. This battery, after receiving the line, started the car easily and promptly. We tried it three times.

Now as I summarize the seven batteries, and in the order based upon the percent of their rated capacity which was delivered on this discharge, I would like to point out that the first battery in order of merit was the one given the water treatment. (That is to say, where the plates were washed with water.) The second, the Delco battery, was one of the two very bad ones at the beginning. The third was the Moco; the fourth was Exide No. 5 which contained Lightning. The fifth battery was the Firestone with the original electrolyte unchanged, and the sixth was Exide No. 4, which contained Lightning, and the seventh was USL, which also contained Lightning. You will see that out of the seven the three batteries which contained Lightning were among the four last of the seven in the order of merit.

From the tests and experiments described above these said technicians concluded that the efficiency of the cells of a battery was exactly the same with or without the use of Lightning; that Lightning would not prevent a battery from freezing, prolong or increase the life of a battery, rejuvenate or benefit a battery in any way, release or cause to be released any additional energy from a battery, or do or perform any of the things claimed for it in the advertising described in paragraph 4 hereof, and that any money expended in the purchase of Lightning for use in a storage battery is and was entirely wasted.

A Dr. K. Arndt, a German scientist of repute, conducted tests with Lightning for the purpose of determining whether Lightning would rejuvenate a storage battery and from the results of these tests he found that it would not.

Four witnesses for respondent—one its president and general manager, two garage men and one who had sold thousands of gallons of Lightning in the Argentine—testified that Lightning would do

all that is claimed for it in the advertising described in paragraph 4 hereof. Their testimony is not convincing.

PAR. 6. The statements and representations in respondent's advertising as described in paragraph 4 are false and misleading, in that Lightning Electrolyte is not a wonderful chemical and was not invented by a famous chemist; is not a self-charging electrolyte; does not charge batteries instantly, or at all; does not make old batteries work like new; its use has no effect on old or other batteries; does not clean sulphation from the plates of old discharged or other batteries; does not charge a battery or the plates of a battery by chemical or other action, or charge either at all; does not rejuvenate batteries; does not double or increase the life of a battery; does not obviate the need of putting the battery on the service station line; does not save the rentals and days of service and waiting incident to such service; will not wholly or partially charge a totally dead battery; any benefit to a battery from the use of a mixture of sulphuric acid and Lightning Electrolyte is derived solely from the sulphuric acid.

PAR. 7. Each and all of the statements and representations as to the efficacy of Lightning contained in the advertising as set forth in paragraph 4, had and have the tendency and capacity to mislead and deceive the ultimate consumers of said Lightning into the belief that such statements and representations were and are true, and to induce them to purchase respondent's said Lightning in such belief, and had and have the tendency and capacity to divert trade to respondent from its said competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in 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 the respondent, the testimony and evidence and the briefs of counsel, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusions that the respondent had violated the provisions of an Act of Congress ap-

proved 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 The Lightning Company, its officers, 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 commodity Lightning Electrolyte, or any other product or products of the same or substantially the same ingredients or compound, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, in or through newspapers, magazines, radio, circulars, pamphlets, or other printed or written matter, or otherwise, that Lightning Electrolyte, or such other product or products, when used in storage batteries, is a self-charging super-electrolyte, or that it charges such batteries instantly or at all; that it makes old batteries work like new or at all; that it doubles the life of a battery or increases the life of a battery at all; that it will partially, sometimes wholly, charge a totally dead battery without help of the line, or that it will charge a totally dead battery at all; that it saves the cost of a new battery; that it will charge your battery in your car in from 5 to 20 minutes, or that it will charge such battery at all; that it will not freeze, and that it can be set out in the coldest climate without freezing; that it is a wonderful chemical; that it was invented by a famous chemist; that it will charge a battery instantly or at all; that due to the use of Lightning Electrolyte, or such other product or products, one will find that instantly they will have plenty of current to turn over the motor and the battery will be charged fully with a short run with the generator attached as usual; that it aids in charging a battery at all; from the use of any other word, words, or representations stating, importing, or implying that Lightning Electrolyte or any similar substance or compound has any virtue as a storage battery rejuvenator, or that its use will charge, aid in the charging, prolong the life, or increase the efficiency of a storage battery.

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.

IN THE MATTER OF
AMERICAN SMELTING & REFINING COMPANY

COMPLAINT, OPINION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED
 VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 2102. Complaint, Apr. 26, 1933—Order, June 25, 1934

**CLAYTON ACT, SECTION 7—MOTION TO DISMISS—JURISDICTION—SAVING PRO-
 VISORS—FORMATION OF SUBSIDIARIES WHERE COMPETITION NOT SUBSTANTIALLY
 LESSENED.**

Respondent's motion to dismiss goes only to the jurisdiction of the Commission, and the facts must be assumed to be as stated in the complaint. Therefore, the respondent can derive no benefit from the third paragraph of Section 7, concerning subsidiaries which do not substantially lessen competition, inasmuch as substantial lessening of competition must be assumed.

CLAYTON ACT, SECTION 7—"COMMERCE"—INTERPRETATION OF STATUTE—CORPORATE IDENTITY.

Corporate forms will be disregarded when necessary in order to carry out the substantive purpose of a statute. Therefore, the newly created subsidiary must be deemed identical with the parent company and so engaged in "commerce".

CLAYTON ACT, SECTION 7—ACQUISITION OF STOCK IN COMPETITOR—ACQUISITION OF ASSETS PRIOR TO COMPLAINT—SCOPE OF SECTION—JURISDICTION.

The decisions in *Thatcher Manufacturing Co. v. Federal Trade Commission*, 272 U. S. 554, and *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 291 U. S. 587, make it clear that the Commission has no power to divest assets, even though acquired by unlawful purchase of stock, and that Section 7 only outlaws mergers effected by stock acquisition. While the instant case of acquisition of assets through a subsidiary might be distinguished, the substance of the decisions makes the question of violation one of means rather than economic consequences. Therefore, the new corporation must be regarded as a subsidiary of the acquiring company and the transaction complained of as an acquisition of assets over which this Commission has no jurisdiction but for which "a remedy is provided through the courts." *Thatcher Manufacturing Co. v. Federal Trade Commission*, 272 U. S. 554, and *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 291 U. S. 587.

CLAYTON ACT, SECTION 7—ACQUISITION OF STOCK IN COMPETITOR—ACQUISITION OF ASSETS PRIOR TO COMPLAINT—STOCK OF CORPORATE SUBSIDIARY AS ASSET—JURISDICTION.

Respondent's contention that acquisition of assets prior to the filing of the complaint defeats the jurisdiction of the Commission cannot be sustained since the respondent's ownership of the assets is dependent on the stock ownership of the new corporation, and so an order requiring parting with the stock of the latter would not be futile, thus distinguishing the instant

case from *Thatcher Manufacturing Co. v. Federal Trade Commission*, 272 U. S. 554, and *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 291 U. S. 587.

Mr. Everett F. Haycraft for the Commission,
Sherley, Faust & Wilson and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission charges that respondent, American Smelting & Refining Company, 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, American Smelting & Refining Company, is a corporation organized April 4, 1899, under the laws of the State of New Jersey, having its principal office and place of business at 120 Broadway, in the City of New York, State of New York, and is engaged in the business of smelting and refining primary and secondary nonferrous metals, including particularly, gold, silver, lead, copper, spelter (zinc), and in the sale in interstate and foreign commerce of said products and a varied line of by-products, including bismuth, cadmium, antimony, arsenic, platinum, palladium, selenium, tellurium, thalium, zinc dust, zinc chloride, copper sulphate and nickel sulphate, and also mixed metals, as follows: Sheet lead, calking lead, type metal, babbitts, solders, tin pipe, and sheet tin. Respondent owns smelters and refining plants in the United States as follows:

| | |
|-------------------------------------------|--------------------------------------|
| Maurer, N. J. (Perth Amboy Plant). | Durango, Colo. |
| Alton, Ill. (Federal plant). | Baltimore, Md. |
| Reading, Pa. (leased). | Omaha, Nebr. |
| East Helena, Mont. | Denver, Colo. (Globe plant). |
| Garfield, Utah. | Murray, Utah. |
| Sand Spring, Okla. | Amarillo, Tex. |
| Hayden, Ariz. | El Paso, Tex. |
| Leadville, Colo. (Arkansas Valley plant). | San Francisco, Calif. (Selby plant). |
| | Tacoma, Wash. |

In addition, the respondent has producing interests in foreign countries, including Mexico, Peru, Newfoundland, and British Columbia. Respondent is the largest nonferrous smelting enterprise in the world. Its income is derived in the major part, from the sale of products and by-products resulting from the smelting and refining

Complaint

19 F. T. C.

of copper and lead ores from its own mines and from mines of other large producers, such as Kennecott Copper Corporation, St. Joseph Lead Company, and other prominent copper and lead companies; but respondent also acts as sales agent for a number of small producers of nonferrous metals, by-products and mixed metals.

Respondent is represented in the metal fabricating industry through the ownership of stock in a number of subsidiary and affiliated corporations engaged in the manufacture of various lines of bronze, brass, and copper products, including the General Cable Corporation and Revere Copper & Brass, Inc.

As of December 31, 1931, respondent was capitalized as follows:

| | |
|----------------------------------------------------------------------------------------------|--------------|
| 500,000 shares preferred stock 7% cumulative (par \$100)----- | \$50,000,000 |
| 200,000 shares second preferred 6% cumulative (par \$100)----- | \$20,000,000 |
| 1,829,940 shares no par common stock (out of an authorized common stock of 4,000,000 shares) | |

Its total assets on said date amounted to approximately----- \$215,850,000

Said respondent, in the course and conduct of its said business, caused its said products, when sold, to be transported from the places of manufacture to the purchasers thereof, located in States other than the State of manufacture, and in foreign countries.

PAR. 2. Federated Metal Corporation is a corporation organized under the laws of the State of Delaware, on June 10, 1924, at which time it acquired the business and substantially all of the assets of the following corporations engaged in smelting and refining primary and secondary nonferrous metals, and in the manufacture and sale of by-products and mixed metals:

Great Western Smelting & Refining Company, of Chicago.
 Duquesne Reduction Company, of Pittsburgh.
 Union Smelting & Refining Company.
 Trenton Smelting & Refining Company, and the
 Eagle Smelting & Refining Works.

The said Federated Metals Corporation, which will be hereinafter referred to as the Federated Corporation, in September, 1932, was engaged in the business of smelting and refining nonferrous primary and secondary metals, including copper, brass, lead, tin, zinc, aluminum, antimony and alloys, and in the sale of the same in interstate and foreign commerce in the form of ingots, bars and blocks of pure metal or alloys, such as brass, bronze, babbitts, and other white metal alloys, or in the form of finished articles such as pipe, wire, type metals and solders. It also is engaged in the scrap metal business, that is, buying scrap metal and other secondary metals from junk dealers and others and reconditioning these materials and reselling the same in interstate and foreign commerce in the shape of

mixed metals and semi-fabricated metals, such as babbitts, solders, type metal, brass, and similar products. It dealt in all usual forms of nonferrous secondary metal (exclusive of gold, silver, and other rare or precious metals), such as scrap residues, drosses, ashes, oxides, etc., and in the purchase, handling, treating, smelting, refining and alloying of these materials, and in the sale in interstate and foreign commerce of the resulting alloys or mixed metals, with smelters and refineries located at Trenton, N. J., Newark, N. J., Pittsburgh, Pa., Detroit, Mich., Whiting, Ind., Chicago, Ill., St. Louis, Mo., and San Francisco, Calif. Its principal place of business in September, 1928, was located at 295 Madison Avenue, in the City and State of New York.

Said Federated Corporation, in the course and conduct of its said business, caused its said products, when sold, to be transported from the places of manufacture to the purchasers thereof located in States other than the State or States where manufactured, and in foreign countries, in competition with said respondent, American Smelting and Refining Company.

As of September 30, 1932, the said Federated Corporation had an authorized stock as follows:

400,000 shares common, no par value, of which
249,845 shares were outstanding and
36,040 shares were held in the treasury.

There were also authorized and outstanding \$4,000,000 par value 15-year 7-percent convertible sinking fund gold bonds, of which \$1,181,000 par value were held in the sinking fund and \$620,500 par value were held in the treasury. The total value of the Federated Corporation's assets as of that date was approximately \$14,000,000.

As of September 30, 1932, said Federated Corporation owned and held the entire authorized and outstanding capital stock of the Missouri Zinc Company, an Illinois corporation, engaged in smelting and refining spelter (zinc) with its plant at Beckemeyer, Ill.

PAR. 3. On September 30, 1932, the said respondent entered into an agreement of reorganization with the said Federated Corporation, and, pursuant to said agreement, said respondent, on or about December 1, 1932, organized a "New Company", under the name of Federated Metals Corporation, under the laws of the State of Delaware, and acquired all of the capital stock of said New Company by exchanging therefor \$3,500,000 par value of American Smelting & Refining Company first mortgage 30-year 5 percent gold bonds, series "A", due 1947, and warehouse certificates representing copper, lead, and spelter in marketable form, of the approximate value of \$2,129,555.66, and the said respondent has continued to own and hold all of

the outstanding capital stock of the said New Company, the name of which has been changed to F. E. D. Corporation.

Pursuant to said agreement, the said Federated Corporation transferred and delivered, or caused to be transferred and delivered to the said "New Company" organized by the respondent as aforesaid, on the date of its organization, all of the said Federated Corporation's business, assets, goodwill, etc., in exchange for the said bonds of the said respondent and said warehouse certificates, which were at that same time transferred to said New Company by said respondent, in exchange for said capital stock of said New Company, as set forth herein; and said New Company has continued since that day to own and operate the business of the said Federated Corporation under the control of said respondent. The said Federated Corporation, since December 1, 1932, after receiving the proceeds from the sale of its business and assets to the said New Company, has distributed the same, pro rata, among its stockholders, and is now in the process of dissolution.

PAR. 4. The acquisition by the respondent of all the capital stock, or share capital, of the said New Company (the Federated Metals Corporation of Delaware), as hereinbefore set out, was contrary to law and in violation of Section 7 of said Clayton Act, and the effect of such acquisition has been, is and may be:

(a) To substantially lessen competition in interstate and foreign commerce between the said American Smelting & Refining Company and the Federated Metals Corporation of Delaware and its predecessor, the said Federated Metals Corporation of New Jersey, during and since the year 1932, in the sale and distribution of nonferrous metals, by-products and mixed metals, including copper, lead (in various forms), spelter (zinc), zinc dust, lead and tin pipe, babbits, type metals, solders, etc.

(b) To restrain interstate commerce in the sale of nonferrous metals, by-products and mixed metals, in certain sections or communities of the United States.

(c) To tend to create a monopoly in the respondent, American Smelting & Refining Company, in the sale and distribution in interstate and foreign commerce, of nonferrous metals, by-products and mixed metals, including copper, lead (in various forms), spelter (zinc), zinc dust, lead and tin pipe, babbits, type metals, and solders.

OPINION OF THE COMMISSION

This is a proceeding against the American Smelting & Refining Company (hereinafter referred to as the Smelting Company), a New Jersey Corporation, for violation of Section 7 of the Clayton Act

(38 Stat. 731; 15 U. S. C. Section 18). Prior to September 30, 1932, according to the complaint, the Smelting Company was in competition with the Federated Metals Corporation, organized under the laws of Delaware. The name of this corporation was subsequently changed to F. E. D. Corporation, but it will hereinafter be referred to as the Federated. The Smelting Company and the Federated were engaged in the smelting and refining and sale in interstate and foreign commerce of various nonferrous metals. Under date of September 30, 1932, the Smelting Company and Federated entered into an agreement whereby Federated agreed to transfer its assets to a new corporation to be created by the Smelting Company. The latter was to subscribe to the total capital stock of the new corporation and pay therefor with its own bonds and certificates representing quantities of various metals of a specified value. These bonds and the ownership of the metals were in turn to be transferred by the New Company to the Federated in payment for the assets. Pursuant to the agreement, the Smelting Company organized under the laws of Delaware a new company named Federated Metals Corporation (hereinafter referred to as the New Company), and the conveyances of bonds, certificates, and assets were then made. Among the assets thus acquired by respondent was the entire outstanding and authorized capital stock of the Missouri Zinc Company, engaged in smelting and refining spelter (zinc).¹ The Federated, after receiving the proceeds from the sale of its business and assets to the New Company, distributed them pro rata among its stockholders and is now in process of dissolution.

The pertinent provisions of Section 7 of the Clayton Act are 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 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.

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.

¹ The complaint makes no specific allegation of competition in interstate or foreign commerce between the Zinc Company and respondent, but such could be proved under the allegation of such competition on the part of the parent corporation.

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.

No hearings have been held in this proceeding, but respondents have filed a motion to dismiss the complaint on the ground that the facts therein stated do not set forth a violation of Section 7 of the Clayton Act. The complaint alleges that the effect of respondent's acquisition of the stock of the New Company and the assets of Federated was to substantially lessen competition in interstate and foreign commerce between respondent on the one hand and the New Company and Federated on the other, to restrain interstate commerce, and to tend to create a monopoly in the respondent. Respondent's motion to dismiss urges the following grounds: (1) that respondent did not acquire the stock "of another corporation engaged also in commerce", as required by the statute, and that the acquisition of the stock of the New Company had no effect either in lessening competition between it and respondent, in restraining commerce, or in tending to create a monopoly; (2) that the acquisition by the New Company of the assets of the Federated involved no violation of the act since the New Company acquired no stock of the Federated and the transaction resulted in no substantial lessening of competition between the New Company and Federated or between respondent and Federated; and (3) that, as shown by the complaint, prior to the filing thereof the properties and assets of Federated had been acquired by the New Company whose stock had been acquired by respondent.

Respondent's grounds for its motion to dismiss are to be considered only insofar as they go to the jurisdiction of the Commission as shown by the complaint and motion. The disputed facts with regard to the existence of competition, the lessening thereof, restraint of commerce, and tendency toward monopoly, must for the purposes of this proceeding be assumed to be as stated in the complaint. For this reason, the respondent can derive no benefit from the last sentence of the third paragraph of the statute, which does not regard the formation of subsidiary corporations as a violation of the main injunction of the statute where the effect of such formation does not substantially lessen competition. The substantial lessening of

competition being conceded for the purposes of this proceeding, the exception is not applicable, and thus the main question of whether there has been a violation of the statute remains.

The statute by its terms requires that both the acquiring corporation and the one whose stock is acquired be engaged in "commerce." But it is to the substance of a statute that one must look for its meaning. To insist upon too literal an interpretation of a statute is frequently to deprive the statute of its ability to accomplish the great objective toward which it was directed. Under some circumstances it seems clear that the technical distinctions of corporate identity may be disregarded in the sense that the substance of the stock acquisition may be looked to in order to determine whether or not it is of the type that the statute sought to make illegal. For example, respondent concedes that if the New Company had acquired the stock of the Federated instead of its assets, the Smelting Company would have been guilty of violating the statute. But that is so only because under such circumstances one would be justified in stripping the New Company of its separate corporate identity, regarding it in its position as a subsidiary as being substantially identical with the Smelting Company, and thus reaching the conclusion that the New Company, as the acquiring corporation, was engaged in commerce because the Smelting Company was so engaged in commerce, with the result that there would be an acquisition of the stock of Federated in violation of Section 7 of the Clayton Act.

The basis for the respondent's position must then be that the substance of the transaction was an acquisition of the assets of the Federated by the Smelting Company and not an acquisition of stock of the type that violates the Clayton Act. *Thatcher Manufacturing Co. v. F. T. C.*, 272, U. S. 554 (1926). Or, to apply the principle of the illustration given above, the New Company would not be "another corporation whose stock is acquired", but the acquiring corporation itself which acquired not stock but assets. The only ground upon which the conclusion can be contested is by regarding the New Company as substantially identical with the Federated and not with the Smelting Company, and thus regarding the acquisition of the stock of the New Company as an acquisition of stock of the Federated and consequently a violation of Section 7 of the Clayton Act.

This is the position taken by counsel for the Commission and three cases are relied upon in support of that contention. In the first of these, *Aluminum Company of America v. F. T. C.*, 284 Fed. 401, (C. C. A. 3d, 1922), certiorari denied in 261 U. S. 616 (1923), the

Aluminum company and the Cleveland company had agreed to organize the Rolling Mills Company to take over the aluminum rolling business and plant of the Cleveland company. The Aluminum company acquired two thirds and the Cleveland company one third of the stock of the Rolling Mills Company. In sustaining the issuance of a cease and desist order for violation of Section 7 of the Clayton Act, the court said:

Assuming for a moment that at the time of the stock acquisition the new corporation had not become engaged in commerce because it had not begun rolling sheets and, therefore, had not been in competition with the Aluminum company we doubt that the Aluminum company could be saved from violating the section in view of the next fact that by the terms of the arrangement the Aluminum company at once put the new corporation into commerce, and put it into commerce in a way which forever prevented competition with itself.

The court then went on to say that the Rolling Mills Company was engaged in commerce at the time of the stock acquisition, pointing out that the stock subscriptions of the Aluminum company were taken up at monthly intervals over a period of six months after the transfer of the assets. Respondent distinguishes this case upon the ground that since the Cleveland company had a substantial interest in the Rolling Mills Company, the latter was not to be treated as purely a subsidiary of the Aluminum company, and hence the case falls without the principle for which respondent contends. Though the interest of the Cleveland company in the Rolling Mills Company was a minority interest and thus for many purposes the Rolling Mills Company should be regarded as a subsidiary of the Aluminum company, there is some basis for not so regarding it in this connection. This arises from the fact that the major portion of the purchase price for the mill of the Cleveland company seems to have consisted in the \$200,000 transferred to that company in stock of the Rolling Mills Company, and that the \$400,000 paid by the Aluminum company to the Rolling Mills Company for the stock acquired by it went into extension of the plant and working capital.²

Thus a distinction between the Aluminum case and that now at issue might be drawn on the theory that substantially no funds of the Aluminum company went into the purchase of the assets of the

²The exact purchase price and the nature of the consideration for the Cleveland company's mill is not specifically set forth in the findings of the Commission. It is stated, however, that the Rolling Mills Company paid to the Cleveland company \$34,890.70 "over and above the original cost of the land and buildings purchased by it" and that the total cost of the rolling mill and the land was \$227,154.64. The Cleveland company acquired "\$200,000 worth" of the stock of the Rolling Mills Company, but nowhere is it stated in the findings what the Cleveland company paid the Rolling Mills Company for this stock.

Cleveland company, but that those funds went to acquire a majority interest in a corporation that had acquired the assets of the Cleveland company for its own stock and was operating them in commerce. The element of time in the acquisition of these assets of the competing corporation would not seem determinative, but the source of their acquisition is relevant in determining whether or not the company whose stock is acquired is merely an *alter ego* of the acquiring corporation or a corporation with enough separate identity to permit the substance of such a transaction to be regarded otherwise than as an acquisition of the assets of the competing corporation through the mechanism of creating a subsidiary to acquire these assets. Cf. *Aluminum Co. v. F. T. C.* 299 Fed. 361 (C. C. A. 3d. 1924).

The second case, *United States v. New England Fish Exchange*, 258 Fed. 732 (D. C. Mass. 1919), was a proceeding under the Sherman and Clayton Acts to dissolve certain organizations of fish dealers. Among these was the Bay State Fishing Company which acquired the control of corporations of dealers, each of which was a Massachusetts corporation. In six of these cases,³ new corporations were organized, the stock of which was held by the Bay State Fishing Company, to which the dealer corporations transferred their assets, thus making the individual dealers the employees of the Bay State Fishing Company and ending competition between them. This transaction was held to be a violation of the Clayton Act, the court saying:

We also are of the opinion that the acquisition by the Bay State Fishing Co. of the stock in the eight corporations in its combination is likewise in violation of the Clayton Act. The fact that five out of eight of the corporations whose stock was taken over by the Bay State Fishing Co. were organized under the laws of Maine, to whom the Massachusetts corporations bearing the same names conveyed their businesses and assets, does not make the situation different than it would have been, and no less a violation of the Clayton Act, had it taken over the stock of the Massachusetts corporations directly. The respective Maine and Massachusetts corporations were in substance the same, and the effect of the formation of the Maine corporations and the taking over of their stock was to defeat competition between all of the subsidiary corporations. The combination of these corporations with the Bay State Fishing Co. was therefore a violation of the Clayton Act and must be dissolved (258 Fed. at 746).

³The stock of two of the corporations was acquired outright. The assets of one Massachusetts corporation were transferred to another Massachusetts corporation that had been organized by the Bay State Fishing Company. The assets of the other five Massachusetts corporations were transferred to Maine corporations organized by the Bay State Fishing Company.

Respondent distinguishes this case on the ground that the new corporations were simply successors of the old and thus that they were not truly subsidiaries of the Bay State Fishing Company. It states that the owners and stockholders of the old corporation were the owners and stockholders of the new corporation. But the report of the case is not wholly clear in this respect. The new corporations were, according to the court, "organized" by the Bay State Fishing Company and their stock was "transferred" to the Bay State Fishing Company (248 Fed. at 743). If the stock had been "issued" to the Bay State Fishing Company, the case would be directly in point with the transaction of which complaint is now made.

The third case upon which counsel for the Commission rely is *F. T. C. v. Vivaudou, Inc.*, 13 F. T. C. 306 (1930). There the respondent was ordered to divest itself of stock in Parfumerie Melba, Inc., a corporation which it had organized for the purpose of taking over the assets of its competitor, the Melba Manufacturing Co., under a contract with the Manufacturing company in which it was stipulated that the respondent might assign the contract to a subsidiary which would assume its obligations under the contract. This case, like the New England Fish Exchange case, is similar to that now under consideration.⁴ But the points now advanced by the respondent were only incidental to the main issues involved in that proceedings; nor were they considered by the Circuit Court of Appeals which reversed the Commission's order on the ground that the necessary substantial lessening of competition had not been established.

The authority of both the Aluminum case and the New England Fish Exchange case on the question now before us is considerably weakened by the decision of the Supreme Court in *Thatcher Manufacturing Co. v. F. T. C.*, *supra*. See also *Arrow-Hart & Hegeman Electric Co. v. F. T. C.*, 291 U. S. 587 (1934). In the Thatcher case, the Court held that an acquisition of stock followed by an acquisition of assets prior to the commencement of proceedings by the Commission precluded the issuance of a cease and desist order for violation of Section 7 of the Clayton Act, on the ground that the Commission had neither power nor authority to bring about a divestiture of assets even though these assets were secured through an unlawful purchase

⁴The Commission's findings do state that "having purchased trade upon which to start and having started upon the trade it had purchased, the new corporation, Parfumerie Melba, Inc., was engaged in commerce at the time its capital stock was acquired by the respondent" (13 F. T. C. at 318). But this finding, taken almost verbatim from the Aluminum opinion (284 Fed. at 408), contradicts the other findings of the Commission to the effect that upon the organization of Parfumerie Melba, Inc., all of its 1,000 shares of no par common stock were issued to the respondent. *Ibid.*

of stock. The case illustrates that Section 7 of the Clayton Act must be construed as outlawing mergers effected through stock acquisition (and not resulting in the acquisition of assets by such stock acquisition prior to the initiation of a complaint by the Commission) rather than as outlawing mergers of equal economic significance effected by the acquisition of assets. This conception of the function of Section 7 of the Clayton Act was not clearly before the courts either in the Aluminum or the New England Fish Exchange cases, and no acute discussion of the problem that now faces the Commission is contained in either of the opinions. The courts there considered economic consequences attendant upon the fact of merger rather than means of effecting these mergers, whereas the means, since the decisions of the Supreme Court referred to above, make the difference between right and wrong.

Much might have been said prior to the Thatcher and Arrow-Hart cases for a liberal interpretation of the statute that had regard for the great objectives of the Clayton Act—an interpretation which would give the Commission effective powers to strike at growing combinations of corporate power. See Laidler, *Concentration in American Industry*, 409; National Industrial Conference Board, *Mergers and the Law*, 111; McFarland, *Judicial Control of the F. T. C.*, 68; Berle and Means, *The Modern Corporation and Private Property*, *passim*. But, however one may deprecate the limiting language of the statute or the enhancement of those limitations by judicial construction, the Commission cannot ignore the line of cleavage cut by the decisions referred to above. True, it would be possible to make of the method of acquiring assets through a subsidiary a distinction which would take the case out of the precise facts of the controlling cases, but such a distinction would have no regard to the substance of the principle that they embody.

The case thus narrows down to the conclusion that such disregard of corporate entities as may under any circumstances be indulged in, whether it be to support the Commission's complaint or the respondent's defense, leads to regarding the New Company merely as a subsidiary of the Smelting Company and thus makes the transaction complained of an acquisition of the assets of the Federated over which this Commission has no jurisdiction, but for which, in the words of the Supreme Court, "a remedy is provided through the courts." *Thatcher Manufacturing Co. v. F. T. C.*, *supra*, at 561. The ruling on this question is, however, without prejudice to the propriety of a complaint based solely upon the respondent's acquisition, through the New Company, of the stock of the Missouri Zinc Company.

Order

19 F. T. C.

Respondent's contention that the acquisition of assets prior to the institution of proceedings in the instant case, precludes any action by the Commission cannot be sustained. In the *Thatcher case* and *Swift & Co. v. F. T. C.*, decided at the same time, divestiture of stock alone would have been useless and the fundamental question was the Commission's jurisdiction to order a restoration of assets. In the present case, since the respondent controls the assets of Federated only through ownership of the New Company's stock, an order requiring it to part with the latter would not be a futile gesture.

Complaint dismissed.

ORDER OF DISMISSAL

This matter coming on to be heard on respondent's motion to dismiss complaint and brief in support thereof, and brief by counsel for the Commission in opposition to said motion, and the Commission having heard oral argument and having duly considered the matter and being now advised in the premises:

It is ordered, That the complaint herein be and the same hereby is dismissed, pursuant to the written opinion of the Commission filed and entered herein on June 22, 1934.

Syllabus

IN THE MATTER OF
THE CHARLES R. SPICER COMPANY, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2089. Complaint, Feb. 3, 1933—Decision, June 26, 1934*

Where a corporation engaged in the sale and distribution of various proprietary medicines direct to the purchasing public, by mail, or through agents, and through wholesale druggists; in advertising the same through booklets, folders and circulars, newspapers, magazines, and testimonials.

- (a) Represented that its "Palvo" or "Palvo Vegetable Compound" constituted a cure, remedy, or competent and adequate treatment for female troubles generally, and included among those specified, serious diseases and pathological conditions classified under the general heading of female diseases, facts being that many of those named require surgical treatment for relief, and preparation in question, with mild laxative and sedative effects and antispasmodic and slight tonic properties, and a tendency to relieve pains incident to certain conditions and ailments of women, was not curative of, or an effective treatment for any serious condition of the female organs, had no curative effects where any definite pathology existed, or any effect on the causes underlying or forming the basis of female troubles and would not cure specific ailments named, but, used for pain, was purely symptomatic in its effects;
- (b) Represented that its "Spicer's Compound" was a "blood tonic and system builder" and purified the blood, and would "work the cold, bile, filth, malaria, and impurities from your system in a surprising manner, and build you up all over", and was a cure, remedy or competent and adequate treatment for "Indigestion—Sour Stomach—Constipation—Billiousness—Torpid Liver—Kidney and Bladder Troubles—Pain in the Back and Hips—Frequent Urination—Weak Bladder—Nervo Sexual Debility—Impure Blood—Sallow Complexion—Pimples and Blotches—Dull, Lazy Feeling—Loss of Appetite", facts being that preparation in question constituted a laxative, diuretic and tonic, but could not accurately or correctly be represented as a blood purifier or blood tonic, or as having results attributed to it, or as a cure, remedy or competent and adequate treatment for the various ailments or conditions mentioned; and
- (c) Represented its "Special Compound No. 141" as a cure, remedy or competent and adequate treatment for lost manhood and as a lasting tonic through such statements as "* * * It is not merely a temporary stimulant but a lasting tonic * * *", and, "Especially recommended for weak, nervous and run-down men and women who are troubled with Lost Vitality, Nervo-Sexual-Debility (lost manhood)", facts being that preparation in question, the therapeutic effects of which were limited to those of a tonic and a stimulant to the appetite, would not restore entirely lost sexual power, and had no therapeutic effect on any disease causing loss of such power, could not correctly be described as a lasting tonic, and did not constitute a cure, remedy, or competent and adequate treatment for lost manhood, lost vitality, sexual debility, or nervo-sexual debility;

Complaint

19 F. T. C.

With capacity and tendency to confuse, mislead; and deceive members of the public into believing that its said medicine constituted a cure or remedy or competent and adequate treatment, respectively, for the various diseases, ailments and physical conditions for which recommended as aforesaid, or that they would give relief in such cases, when such was not the case or true to a limited extent only, and to induce members of the public to buy and use the said medicines because of the erroneous beliefs thus engendered, and divert trade to it from competitors engaged in the sale of medicines adapted to and used for the treatment of the same ailments and conditions for which it offered its preparations, or from those engaged in sale of medicines adapted to and used for treatment of the diseases which produce or cause the conditions or ailments for which it represented its medicines as treatments; to the substantial injury and prejudice of competitors who in no wise misrepresent the therapeutic effects of their products, and with effect of diverting business therefrom and tendency so to do:

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. Harry D. Michael for the Commission.

Canada & Russell, of Memphis, Tenn., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation engaged in the sale and distribution of certain proprietary medicines or medical preparations to druggists and the consuming public, and with principal office and place of business in Memphis, with advertising falsely or misleadingly and misrepresenting product as to qualities or properties, 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 advertising certain of its said preparations in newspapers, magazines and other publications of general circulation, and in sales promotional literature such as letters, booklets, pamphlets and other similar matter, and through salesmen or solicitors, represents that (a) its "Palvo Vegetable Compound", is a new remedy for female troubles, and an effective therapeutic agent or remedy for the relief and cure of ailments peculiar to women, and has restored health and happiness to thousands of suffering women, and constitutes a tonic and effective therapeutic agent or remedy for the treatment, relief and cure of numerous specified ailments and conditions; (b) its "Compound" purifies the blood, reestablishes peristaltic action, constitutes a system builder for both men and women, and that it does and will

eliminate from the system cold, bile, malaria, and impurities, and constitutes an effective therapeutic agent or remedy for the relief and cure of weakness, nervousness, indigestion, biliousness, and various othe ailments and conditions; and (c) its special "Compound No. 141" constitutes an effective therapeutic agent or remedy for the relief and cure of, and will cure nervous and rundown conditions of men and women, lost or low vitality, and nervo sexual debility, and constitutes a lasting tonic; the facts being said various preparations are not such therapeutic agents or remedies as represented, nor effective for the relief or cure of the various diseases and ailments specified, and cannot accomplish the results or effects attributed to them by respondent.

Use by respondent, as alleged, of such representations, statements and assertions "in advertising, selling and distributing said products, are false, misleading and deceptive; and have and had the capacity, tendency and effect of misleading and deceiving the purchasing and consuming public throughout the United States into purchasing said products in the erroneous beliefs that such representations, statements and assertions (1) are and were true in fact, (2) that such products are effective therapeutic agents or remedies for the relief and cure of the respective diseases or physical ailments specified * * * and (3) that the said medicinal preparations are products of the respective kind and character stated in said representations and can and will accomplish the several respective therapeutic effects or results attributed to them by such representations", and use of said false, misleading and deceptive representations, statements and assertions, as aforesaid, constitutes practices or methods of competition which are unfair to its competitors (among whom there are those who sell and distribute through truthful and fair representations, products for the alleviation and treatment of the same kind of ailments as those for which respondent recommends and sells its said products), and tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure competitors, and, (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of selling therapeutic agents or medicinal preparation for the treatment of human ailments and physical conditions; in violation of the provisions of Section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

Findings

19 F. T. C.

sion, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, The Charles R. Spicer Company, Inc., 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, oral argument having been dispensed with on account of failure of counsel for respondent to appear at the time set therefor, 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, The Charles R. Spicer Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, and has its principal office and place of business in the city of Memphis in said State. Said respondent is now, and has been engaged for more than four years last past, in the business of selling and distributing in interstate commerce in and among the various States of the United States to members of the public various proprietary medicines or medicinal preparations among which are the following, which are designated and described by respondent, respectively, as:

- (a) "Palvo" or "Palvo Vegetable Compound."
- (b) "Spicer's Compound", also designated as "Nux-Herbs and Iron" and "Spicer's Nux-Herbs and Iron."
- (c) "Spicer's Special Compound Number 141" or "Spicer's Special Tonic Number 141."

and said respondent causes and has caused its said medicines, when so sold, to be transported in interstate commerce from its said place of business in Tennessee to, into and through States of the United States other than Tennessee to persons, firms, and corporations to whom or to which its said products are or have been sold. Respondent sells its said preparations direct to the purchasing public by mail or through agents and also sells them to wholesale druggists for ultimate resale to members of the consuming public by retail stores.

Findings

PAR. 2. 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 medicinal preparations similar in kind to those of respondent and also of those designed, intended, or used for the treatment of the various diseases and bodily ailments for which respondent's said preparations are represented and advertised 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, to the purchasers thereof to whom or to which they are or have been sold. Such competitors sell their products to wholesale and retail druggists for ultimate resale to members of the purchasing public and in some instances, directly to the consumers. Respondent has been, during the aforesaid time, in direct and substantial competition in interstate commerce in the sale of its said preparations with such other individuals, firms and corporations.

PAR. 3. Respondent, in advertising its said products, makes use of booklets, advertising folders and circulars distributed to the purchasing public in various States of the United States. Respondent has also made use of advertisements inserted in newspapers and magazines circulated to the purchasing public in the various States of the United States. In its advertising matter in regard to Palvo, respondent represents by direct statements and by implication, that said medicine is a cure, remedy or competent and adequate treatment for "female troubles" generally, including "ovarian pains", "painful and irregular menstrual periods", "uterine displacements (falling of the womb)", "leucorrhea or whites", "pus tubes", "change of life", "pregnancy". By the use of testimonial letters, respondent represents that said medicine is a cure, remedy, and competent and adequate treatment for serious diseases and pathological conditions classed under the general heading of female diseases, many of which would require surgical treatment for relief.

The formula of Palvo is as follows:

| Fluid extract: | <i>m.</i> |
|-------------------------------------------|-----------|
| Cascara sagrada aromatic..... | 30 |
| Viburnum opulus (cramp bark)..... | 18 |
| Viburnum prunifolium (black haw)..... | 18 |
| Cimicifuga (black cohosh)..... | 18 |
| Caulophyllum (blue cohosh)..... | 9 |
| Mitchella repens (squaw vine)..... | 9 |
| Aletris (unicorn root)..... | 9 |
| Hydrastis (golden seal root) U. S. P..... | 3 |

In addition 25 percent of the medicine consists of alcohol.

Neither the formula of Palvo nor its ingredients are "new". The representation that Palvo is a cure, remedy, or competent and adequate treatment for female troubles generally is misleading and untrue since it is much too broad a representation. Said medicine is not curative of, or an effective treatment for any serious condition of the female organs. It has no curative effects where any definite pathology exists. It will not cure or remedy ovarian pains, uterine displacements, leucorrhœa, pus tubes, enlargement or inflammation of the generative organs, fibroids of the uterus, cyst of the ovary, cancer of the uterus, infections of the uterus or of the Fallopian tubes, all of which are included in the term "female troubles". It has no effect on the causes underlying or forming the basis of female troubles. It is not a general tonic for women.

Palvo is a mild laxative and has a sedative effect and anti-spasmodic properties. It will tend to relieve constipation and some few types of pain such as menstrual pains. In its use for pain, its effects are purely symptomatic. It will tend to relieve pains incident to the menstrual periods of women and in connection with amenorrhœa, dysmenorrhœa, and menorrhœgia, but will not be curative of any definite pathology producing or causing the same. It has, also, slight tonic properties.

In its advertising of Spicer's Compound, respondent represents, among other things, that it is a "Blood Tonic and System Builder" and that it "Purifies the Blood". Respondent has also represented that "It will work the cold, bile, filth, malaria, and impurities from your system in a surprising manner, and build you up all over"; that it is a cure, remedy or competent and adequate treatment for "Indigestion—Sour Stomach—Constipation—Biliousness—Torpid Liver—Kidney and Bladder Troubles—Pain in the Back and Hips—Frequent urination—Weak Bladder—Nervo Sexual Debility—Impure Blood—Sallow Complexion—Pimples and Blotches—Dull, Lazy Feeling—Loss of Appetite."

The formula for Spicer's Compound is as follows:

Each 50 gallons contains an infusion consisting of:

| | |
|-------------------------------|--------------|
| Alexandria senna leaves..... | 7 lb. 8 oz. |
| Buchu leaves (short)..... | 2 lb. 4 oz. |
| Juniper berries..... | 2 lb. 4 oz. |
| Rhubarb root..... | 2 lb. 4 oz. |
| Jalap root..... | 1 lb. 12 oz. |
| Compound licorice powder..... | 1 lb. |

The above infusion is mixed with the following solution :

| | |
|---------------------------------------------|----------|
| Epsom salts..... | 100 lbs. |
| Fluid extract nux vomica..... | 24 oz. |
| Fluid extract belladonna root..... | 6 oz. |
| Fluid extract cascara sagrada aromatic..... | 98 oz. |
| Tincture iron chloride..... | 24 oz. |
| Sodium benzoate..... | 2 lbs. |
| Saccharine..... | 3¾ oz. |
| Caramel color..... | 1 gal. |

The total amount being 50 gallons.

Spicer's Compound is a laxative, a diuretic, and a tonic as stated on the label. Any representations beyond such therapeutic effects are either greatly exaggerated or grossly inaccurate. The iron content would tend to restore the hemoglobin content of the blood and to increase the red blood corpuscles in cases where there is a lack of iron in the diet, but absorption of the iron may be prevented by the laxative effect of other ingredients. Said preparation further acts as a stimulant to the appetite by reason of ingredients that have the effects of bitters. It is not correct to represent it as purifying the blood. It has no effect on impure blood except such effect as a laxative would have where the impurities in the blood are such as are caused by constipation. It is not accurate to represent said medicine as a "blood tonic" since its effects on the blood are limited to those stated above. It is incorrect to represent that Spicer's Compound "will work the cold, bile, filth, malaria and impurities from your system" because its effects in such cases would be limited to those attendant upon evacuation of waste matter from the bowels. Said medicine is not an adequate or competent treatment for malaria and is not indicated in the treatment thereof. It will have no effect on colds except that produced by its laxative properties. It is not a cure, remedy or competent and adequate treatment for indigestion, sour stomach, constipation, biliousness, torpid liver, kidney and bladder troubles, pain in the back and hips, frequent urination, weak bladder, nervo-sexual debility, sallow complexion, pimples, and blotches, dull and lazy feeling, or loss of appetite.

Such representations are either inaccurate, unwarranted, too general, or lacking in specific limitation. Its effects in indigestion and sour stomach are limited to the effects produced by a laxative in such cases. Its use in constipation gives temporary relief only. It has no direct effect on the liver and its only effect in biliousness and torpid liver is such as may result from a cleaning out of the intestines. Its effect in kidney and bladder troubles is limited to that produced by a diuretic which is merely to increase the flow of urine. Its effect

in cases of pain in the back and hips is limited to those cases where the condition is caused by constipation. It would be of no therapeutic effect in cases of frequent urination. Its only effect in nervo-sexual debility would be that given by a mild tonic. It will not give relief in cases of sallow complexion, pimples and blotches except in those cases occasioned by constipation. It will give relief in cases of dull or lazy feeling and loss of appetite only in those cases occasioned by constipation or where a mild tonic or a stimulant to the appetite is all that would be required. It is much too broad and grossly inaccurate to represent this medicine as being a system builder. Its effects on the system would be limited to those herein set out.

Spicer's Special Compound No. 141 is represented as being a cure, remedy or competent and adequate treatment for lost manhood and as a lasting tonic. Representations that have been made by respondent in this regard are as follows:

Especially recommended for nervo-sexual debility (lost manhood).

Spicer's Special Tonic Number 141 is especially recommended for weak, nervous, and run-down men and women who are troubled with low vitality, nervo-sexual debility (lost manhood).

. . . it is not merely a temporary stimulant but a lasting tonic . . .

Especially recommended for weak, nervous and run-down men and women who are troubled with lost vitality, nervo-sexual debility (lost manhood).

The formula for Spicer's Special Compound No. 141 is as follows:

| | |
|----------------------------|--------|
| Damiana | 80 gr. |
| Saw palmetto | 80 gr. |
| Muirapuama | 40 gr. |
| Nux vomica | 8 gr. |
| Iron pyrophosphate soluble | 8 gr. |
| Alcohol | 22% |

The term "lost manhood" includes the entire loss of sexual power as distinguished from a temporary suspension. So do likewise the terms "lost vitality", "sexual debility" and "nervo-sexual debility". This medicine will not restore sexual power when it has been entirely lost. It has no therapeutic effect on any disease causing loss of sexual power. Its therapeutic effects are limited to those of a tonic and a stimulant to the appetite. Some of the ingredients of this medicine are used for their supposed aphrodisiac effect but controlled clinical tests have failed to demonstrate any such effect. It is not correct to describe this medicine as a lasting tonic. The iron ingredient would tend to build up the hemoglobin content of the blood and to increase the red blood corpuscles in cases where there is a lack of iron in the diet. Said medicine is not a cure, remedy or com-

petent and adequate treatment for lost manhood, lost vitality, sexual debility or nervo-sexual debility. It may be of some benefit in run-down conditions not caused by any serious diseased condition or by old age and then principally because of its tonic properties.

PAR. 4. The representations of respondent as aforesaid, have had and do have the capacity and tendency to confuse, mislead and deceive members of the public into the belief that respondent's said medicines are a cure, remedy or competent and adequate treatment, respectively, for the various and sundry diseases, ailments and physical conditions of the human body for which they are recommended by respondent as aforesaid or that they will give relief in such cases when such are not the facts or only to a limited extent. Said representations have had and do have the tendency and capacity to induce members of the public to buy and use the said medicines 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 adapted to and used for the treatment of the various diseases, ailments and physical conditions of the human body for which respondent represents its said preparations, respectively, or from competitors engaged in the sale as aforesaid of medicines adapted to and used for the treatment of the diseases which produce or cause the conditions or ailments for which respondent represents his medicines, respectively, to be treatments.

PAR. 5. There are among the competitors of respondent in the sale of its 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 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 briefs filed herein by counsel for the Commission and for respondent, oral argument having been dispensed with on account of failure of counsel for respondent to appear at the time set therefor, 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, The Charles R. Spicer Company, 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 its preparation known as Palvo or of any medicine of the same or substantially the same ingredients under any other name, cease and desist from representing by express statement, by implication or by use of the statements, testimonials or endorsements of others, that said medicine is a cure, remedy, or competent and adequate treatment for female troubles or female diseases, ovarian pains, painful and irregular menstrual periods, uterine displacements, falling of the womb, leucorrhoea or whites, pus tubes, or any diseased condition of the female organs or of ailments incident to change of life or pregnancy; or that it will give relief in any diseased condition of the female organs other than giving some relief from pain and such relief as may be brought about in such cases by laxative effects; or that it will relieve female troubles unless such term is specifically limited to relief from pain in the ordinary menstrual period and in amenorrhoea, dysmenorrhoea, and menorrhagia, where no definite pathology exists, and to such relief in such cases as may result from the laxative and sedative properties of said medicine.

It is further ordered, That respondent, 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 its preparation known as Spicer's Compound, or of any medicine of the same or substantially the same ingredients under any other name, cease and desist from representing, by express statement or by implication, or by use of the statements, testimonials or endorsements of others, that said medicine is a cure, remedy, or competent and adequate treatment for indigestion, sour stomach, constipation, biliousness, torpid liver, kidney troubles, bladder troubles, pain in the back and hips, frequent urination, weak bladder, nervo-sexual debility, impure blood, sallow complexion, pimples,

blotches, dull or lazy feeling, loss of appetite, colds or malaria; or that it will purify the blood, unless it is specifically limited to the effect on the blood of the removal of waste matter from the bowels in cases where the blood has been affected by constipation; or that it is a blood tonic, unless it is specifically limited to a tendency to increase the hemoglobin content of the blood and to increase red blood corpuscles in cases where there is a lack of iron in the diet; or that it is a system-builder, unless it is specifically limited to its effect on the blood as just stated and to its tonic effects and to its effects in stimulating the appetite; or that it works the cold, bile, filth or impurities from the system unless it is specifically limited to the effects of the laxative properties and the evacuation of the waste matter from the bowels; or that it is a treatment for malaria; or that it will relieve indigestion or sour stomach, unless such relief is limited to cases due to constipation; or that it will relieve constipation, unless it is limited to temporary relief; or that it acts directly on the liver; or that it will relieve biliousness or torpid liver, unless it is limited to cases where no definite pathology exists and to such relief as may be occasioned by the removal of waste products from the intestinal tract; or that it will relieve kidney or bladder trouble unless it is limited to the soothing effect of the diuretic; or that it will relieve pain in the back and hips, unless it is limited to cases resulting from constipation; or that it will relieve frequent urination; or that it will relieve nervo-sexual debility, unless it is specifically limited to a slight tonic effect in minor cases and to those not caused by disease or old age; or that it will relieve sallow complexion, pimples, or blotches unless it is specifically limited to cases of any such nature due to constipation; or that it will relieve colds, unless it is limited to the effects of a laxative in such cases; or that it will relieve dull or lazy feeling, unless it is limited to cases due to constipation and to the effects of a tonic and a stimulant to the appetite; or that it will relieve loss of appetite, unless it is limited to its tonic effects, to the effects of a temporary stimulant to the appetite and to the laxative effect in cases due to constipation.

It is further ordered, That respondent, its officers, directors, agents, representatives, servants and employees, in connection with the sale, offering for sale or distribution in interstate commerce and in the District of Columbia, of its preparation known as Spicer's Special Compound No. 141, or of any medicine of the same or substantially the same ingredients under any other name, cease and desist from representing by express statement, or by implication, or by use of the statements, testimonials or endorsements of others, that

Order

19 F. T. C.

said medicine is a cure, remedy, or competent and adequate treatment for lost manhood, lost vitality, sexual debility or nervo-sexual debility; or that it will relieve any such condition unless it is specifically limited to cases not occasioned by disease, old age, or other cause producing permanent loss of sexual power, and unless it is limited to minor cases of lowered sexual ability of a temporary nature and to the effects produced by a tonic, a stimulant to the appetite, and the iron ingredient tending to increase the hemoglobin content and the red corpuscles in the blood in cases where there is a deficiency of iron in the diet.

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

Syllabus

IN THE MATTER OF
CURRIER'S TABLETS, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2095. Complaint, Mar. 14, 1933—Decision, June 26, 1934*

Where a corporation engaged in the manufacture of a medicine for ailments and diseases of the stomach and digestive organs, the ingredients in which constituted at one time a popular stock combination with drug houses as a reputed remedy for gastric ulcer or irritation, but was discredited among the medical profession because of its untoward effects, and in the sale of said remedy by and through mail order, selected druggists, who acted as its exclusive agents in their particular localities, and, finally, through such druggists as desired to handle its said product, and sale direct to ultimate consumers who were not able to purchase from a druggist dealer; in describing the same in newspaper and radio advertising, and in bulletins and circulars distributed to druggist dealers—

Falsely represented that said tablets never failed to rid sufferers of gas pains, indigestion, ulcers, heartburn, acidosis and constipation, were guaranteed to rid one of stomach troubles and bring instant and positive relief, constituted a "positive remedy" for gastritis, acute indigestion, hyperacidity, stomach ulcers, or any ailments caused by an excessive acid condition, regardless of the patient's condition, contained nothing that could possibly hurt one, a child could take a whole bottle without the slightest ill effects, X-ray pictures proved that they had rid 2,441 sufferers of gas pains and ulcers, and their discovery had startled the civilized world;

The facts being that the combination concerned merely provided temporary relief, might actually aggravate conditions and do more harm than good, involved actual danger to the user through presence of certain ingredients, and, for self-medication, constituted a dangerous combination in that it might actually harm one taking it without expert medical advice, and in that any possible temporary relief might give a false hope to a person with some serious disease needing immediate medical attention, and preparation did not possess such therapeutic value so that it could truthfully be designated or referred to as a cure or safe remedy for sufferers from stomach troubles, ulcers, acidosis, indigestion, nausea, or similar diseases, on fifteen days' trial or otherwise, nor give lasting relief;

With effect of inducing the consuming public to purchase said product in the erroneous belief that it was a remedy or cure for aforesaid various ailments and other diseases of the stomach, and use thereof would relieve or completely restore health to the persons suffering therefrom, and of diverting trade from and otherwise injuring competitors, and with tendency so to divert:

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

Complaint

19 F. T. C.

Mr. Everett F. Haycraft and *Mr. Marshall Morgan* for the Commission.

Kelby & Lawson and *Davis & Thorne*, of Los Angeles, Calif., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the sale and distribution in the various States of products described as remedies for stomach troubles, ulcers, acidosis, indigestion, nausea and other ailments or diseases, and with principal office and place of business in Los Angeles, with advertising falsely or misleadingly as to qualities or properties of product, and using endorsements or testimonials falsely or misleadingly, in that respondent (1) falsely represents through pamphlets, catalogs, leaflets, letters, circulars, radio broadcasts and otherwise that his said products or tablets constitute a cure or safe remedy for sufferers from stomach troubles, ulcers, acidosis, indigestion, nausea and other similar ailments or diseases,¹ the facts

¹ As alleged in the complaint, such false and misleading statements and representations included the following:

"I Guarantee to rid you of stomach troubles, gas pains 15-day trial or no pay Currier's Famous Stomach Tablets never fail to rid sufferers of gas pains, indigestion, ulcers, nausea, heartburn, acidosis, constipation. Agnes Riley of Monrovia, Calif., writes: 'My husband in bed with terrible gas pains and ulcers was given up. After taking 3 Currier's Tablets he began to improve. Now he is well and at work.' I don't care how old and severe your stomach trouble, I guarantee Currier's Tablets to bring you instant and positive relief or they are free to you. Write now for my free book, 'Facts How Currier's Tablets Quickly Rid Thousands of Sufferers From Stomach Trouble,' and my special 15-day trial or no pay. Currier's Tablets, Inc., Dept. 800, 1480 Vine St., Los Angeles!"

"Stomach troubles healed! X-ray pictures prove rids 2,441 sufferers of gas pains, ulcers, indigestion; accept full 15-day trial offer."

"Friends, almost in every case, gastritis, acute indigestion, hyperacidity, stomach ulcers are caused by an excess acid condition of the stomach. If you have been suffering from stomach trouble for any length of time, caused by this condition, I want to say to you that I am bringing to you a message which is of vital importance to you. This message concerns the famous Currier's Stomach Tablets which are a positive relief remedy for these conditions. In fact, Currier's Tablets, Inc. are so sure that these tablets will relieve you that they absolutely guarantee them to bring you relief, regardless of your present condition, within 15 days, or your money will be refunded to you immediately. Also, please do not confuse Currier's Tablets with the ordinary stomach remedy, or anything that you have ever heard about or tried before. The discovery of the formula for Currier's Stomach Tablets has startled the civilized world, and I say to you that it makes it absolutely unnecessary for anyone to continue to suffer from these conditions. May we say to you also that it is not the object of this radio broadcast to have you send for Currier's Tablets. We are broadcasting this message in the hope that you who are suffering will hear this message and let us know where you are so that we may send to you, by mail, this priceless information concerning Currier's Tablets. Full detailed information will be sent to you without any obligation if you will take the trouble to go to your telephone now and call Hollywood 7934, or if you will write a letter or a postal card to Currier's Messenger, c/o K. N. X., Hollywood, California."

"Currier's Stomach Tablets are absolutely guaranteed to relieve gastritis, acute indigestion, hyperacidity, stomach ulcers, or any of these ailments caused by an excess acid

being they do not possess such therapeutic value or medicinal qualities so they may be truthfully so represented, designated or referred to, and in that respondent (2) distributes circulars, booklets or pamphlets in which various persons give or purport to give testimonials to the effect that they had been suffering from stomach troubles or other various diseases and had been completely cured or restored to health by use of respondent's said tablets, notwithstanding fact that respondent was without knowledge as to the disorder, diseases or ailments from which such persons were actually or had been suffering; with capacity and tendency to mislead and deceive, or with effect of misleading and deceiving the purchasing public into believing that tablets in question constituted remedies or cures for the various ailments and diseases for which represented as above set forth, and that their use would relieve, cure or completely restore to health persons suffering therefrom, and of inducing purchase of its said tablets in reliance upon such erroneous belief, and of diverting trade from and otherwise injuring competitors of respondent, and with tendency so to induce and divert; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Currier's Tablets, 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.

Respondent thereupon entered its appearance by counsel and on April 20, 1933, filed its answer to said complaint. By such answer respondent generally and specifically denied the various allegations in said complaint. Thereafter hearings with respect to the charges in the complaint were held before an examiner of the Commission thereunto duly appointed, at which evidence was offered in support of and in opposition to the complaint.

Thereupon the taking of testimony was closed, briefs were filed on behalf of the Commission and the respondent, respectively, and

condition, within 15 days, regardless of your present condition, or your money will be refunded to you immediately. Friends, this is an absolute guarantee.

"Currier's Tablets are harmless. There is not one thing in Currier's Tablets that can possibly hurt you. A child could take the whole bottle without the slightest of ill effects."

"Can stomach ulcers be healed? Most emphatically 'Yes'. * * * "Can Currier's Tablets possibly harm me? Emphatically No!"

oral argument was waived on behalf of respondent. And the Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Currier's Tablets, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business in the city of Los Angeles, State of California. Since its organization in 1928, respondent has been engaged in the manufacture and sale of a remedy known as Currier's Tablets designed by respondent for treatment of human beings suffering from various ailments and diseases of the stomach and digestive organs. These tablets have been advertised and sold by respondent as relieving gastritis, acute indigestion, hyperacidity, stomach ulcers or any ailments due to excess acid condition, and as healing those suffering from gas pains, ulcers and indigestion. Respondent has been selling its said product to drug stores and to the consuming public located in the various States of the United States. The drug stores selected to handle respondent's product were furnished with booklets and circulars describing it. Ultimate consumers were reached by mail and through the medium of radio, magazine and newspaper advertising. Respondent causes its said product, Currier's Tablets, when sold to be transported in interstate commerce by mail and by other means of transportation from its place of business at Los Angeles, Calif., into and through States of the United States other than the State of California to the vendees at their respective points of location.

Respondent has been and is now in active competition with various persons, partnerships and other corporations, also engaged in the sale in commerce among the several States, of similar preparations designed for the treatment of persons suffering from like diseases and ailments.

PAR. 2. Respondent's methods of sale have included the following, among others:

For three and one-half years prior to August 1932, respondent conducted a mail order business in connection with the sale and distribution of its products. Mail order business was obtained largely through the medium of radio advertising. Newspaper advertising in papers of general circulation throughout the country was also resorted to with a view to obtaining mail order business. Copy was continued in papers so long as it was found to pay. Respondent

spent \$1,200 a month for newspaper and magazine advertising throughout the United States. The last advertising of this character was carried in the "Pathfinder" magazine in February 1932. The last radio advertising, consisting of a dealer program, occurred in February 1933.

In August 1932 respondent adopted the plan of selecting drug stores in various cities and towns of the United States to act as its selling agents, constituting some one druggist in a city or town as its exclusive agent. Eight or nine hundred drug stores in this way acted as exclusive agents for respondent. These drug store agencies were, in turn, replaced by a plan whereby any drug store that wanted to sell the tablets could buy them. Bulletins and circulars describing respondent's product were distributed to the drug stores handling it, three booklets being sent with each bottle. This practice was followed for some months and then changed to that of sending booklets upon request. Respondent's last announced policy was that of distributing entirely through drug stores, mail order business being continued only in the case of customers unable to buy through a store.

PAR. 3. In offering for sale and selling in interstate commerce its product called Currier's Tablets, respondent, among others, has made the following statements and representations: That Currier's Famous Stomach Tablets never fail to rid sufferers of gas pains, indigestion, ulcers, heartburn, acidosis and constipation; that Currier's Tablets are guaranteed to rid one of stomach troubles; are guaranteed to bring instant and positive relief; that X-ray pictures prove Currier's Tablets rid 2,441 sufferers of gas pains and ulcers; that the discovery of the formula for Currier's stomach tablets has startled the civilized world; that Currier's Tablets are absolutely guaranteed to relieve gastritis, acute indigestion, hyperacidity, stomach ulcers; or any ailments caused by an excess acid condition regardless of the patient's condition; that Currier's Tablets are harmless; that there is not one thing in them that could possibly hurt one, and a child could take a whole bottle without the slightest ill effects; that stomach ulcers can most emphatically be healed and that Currier's Tablets cannot possibly harm one.

PAR. 4. The tablets manufactured and sold by respondent are composed of the following ingredients in the proportions indicated:

| | |
|---------------------------------------|-------|
| Bismuth subnitrate..... | 36% |
| Magnesium oxide..... | 31% |
| Sodium bicarbonate..... | 25% |
| Excipients and oil of peppermint..... | q. s. |

Bismuth subnitrate is an insoluble material which will coat over the mucous membrane of the stomach and intestines, reduce the nor-

Findings

19 F. T. C.

mal secretions of the intestinal tract, and tend to promote constipation, also reducing appetite. This compound is a dangerous agent in that it may split up in the intestinal tract, with the resulting formation of nitrous acid or nitrite which may be absorbed and cause a dangerous collapse. If there is an ulcer or an abraded area in the stomach or intestines, the bismuth subnitrate may be absorbed, which might lead to bismuth poisoning, and especially if the dosage be not carefully controlled. Bismuth poisoning is similar to mercury poisoning and is a very dangerous condition. The use of bismuth subnitrate as a medicinal agent by physicians has generally been abandoned because of the dangers of this action.

Magnesium oxide is a mild alkali which may neutralize free hydrochloric acid in the stomach. If improperly used, as is likely in self-medication, it may interfere with normal digestion.

Sodium bicarbonate is a strong alkaline drug, which will also neutralize hydrochloric acid in the stomach and thus relieve irritation which may be due to excess hydrochloric acid. But it stimulates more secretion of acid, and is likely to exaggerate or aggravate the irritating effect of hyperacidity.

There is no physiological effect from the excipients, that is, either starch or talc. The other ingredients, such as oil of peppermint, or other flavoring oils, are added to give a pleasant flavor to what would otherwise be an unpleasant tasting material. Traces of oil of peppermint or similar essential oils may stimulate gastric and intestinal activity slightly.

The combination comprising Currier's Tablets was at one time a stock pharmaceutical combination which was very popular on the part of commercial drug houses, and was sold as a reputed remedy in gastric ulcer or gastric irritation. It has been generally discredited among the medical profession because of its untoward effects, on the basis that it merely provides a temporary relief; further, that it may actually aggravate the condition and do more harm than good; and, finally, that there is actual danger from its use.

The Currier's Tablet combination for self-medication is a dangerous one, both from the standpoint that it may actually do harm to the person taking it without expert medical advice, and secondly, that the misleading temporary relief which it may afford may give a false hope to the patient or to the individual who may have some serious disease that needs expert medical attention.

The preparation or formula does not possess such therapeutic value or medicinal qualities as to be truthfully represented, designated, or referred to as a cure or safe remedy for sufferers from stomach troubles, ulcers, acidosis, indigestion, nausea, and other

similar ailments, or diseases of the body; nor does it give lasting relief.

PAR. 5. Roy C. Currier, president of the respondent company, was not and is not prepared to attribute to Currier's Tablets the numerous virtues accorded to this remedy by the advertisements put out by the company of which he was and is the head. Mr. Currier is not a doctor and has not obtained any opinion from any medical doctor or any physician saying whether or not the tablets possess the therapeutic value which has been attributed to them and has never made any attempt to diagnose or to have a diagnosis made of any of the ailments of any patients using Currier's Tablets, but, on the contrary, has relied entirely upon the statements contained in testimonials received. The therapeutic value ascribed to his company's product was and is based upon such testimonials received from customers.

PAR. 6. The statements and representations of respondent, hereinbefore described, are false and misleading in that—

(1) Currier's Tablets cannot and do not without fail, on fifteen days' trial, or otherwise, rid sufferers of gas pains, indigestion, ulcers, nausea, heartburn, acidosis and constipation.

(2) X-ray pictures do not and cannot show 2,441 stomach sufferers "healed" or "rid" of gas pains, ulcers or indigestion by this remedy.

(3) Currier's Tablets are not a "positive remedy" for gastritis, acute indigestion, hyperacidity, or stomach ulcers.

(4) The discovery of the formula for Currier's Tablets has not startled the civilized world.

(5) Currier's Tablets are not harmless, and a child would not be able to take a whole bottle of the product without the slightest ill effects.

(6) Stomach ulcers or other ailments or diseases of the stomach cannot be healed by Currier's Tablets.

PAR. 7. The above mentioned false and misleading representations in connection with the sale of said product have induced the consuming public to purchase said product under the erroneous belief that said product is a remedy or cure for stomach troubles, ulcers, acidosis, indigestion, nausea, and other ailments or diseases of the stomach, and that the use of respondent's said product will relieve or completely restore health to persons suffering from the aforesaid ailments or diseases, and have tended to divert trade from, and have diverted trade from, and otherwise injured competitors of respondent.

Order

19 F. T. C.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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 14th day of March, A. D. 1933, issued its complaint against Currier's Tablets, Inc., respondent herein, and caused the same to be served on said respondent on the 20th day of March 1933, in which complaint it is charged that the respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

This proceeding having been 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 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, Currier's Tablets, Inc., its agents, representatives and employees, in connection with the offering for sale, advertising by means of the mail, radio, newspapers or otherwise, and sale in interstate commerce or in the District of Columbia, of the product or remedy known as Currier's Tablets, or any product of substantially the same composition and ingredients sold under the name Currier's Tablets or any other name, do cease and desist from representing:

(1) That Currier's Tablets, without fail, on fifteen days' trial, or otherwise, will rid sufferers of gas pains, indigestion, ulcers, nausea, heartburn, acidosis and constipation;

(2) That X-ray pictures show 2,441 stomach sufferers "healed" or "rid" of gas pains, ulcers or indigestion by this remedy;

(3) That Currier's Tablets are a "positive remedy" for gastritis, acute indigestion, hyperacidity, or stomach ulcers;

(4) That stomach ulcers or other ailments or diseases of the stomach can be healed by Currier's Tablets;

(5) That the discovery of the formula for Currier's Tablets has startled the civilized world;

(6) That Currier's Tablets are harmless, a child being able to take the whole bottle without the slightest ill effects.

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

IN THE MATTER OF
J. G. DODSON AND MRS. C. M. DODSON, TRADING UNDER
THE NAME AND STYLE OF IRONIZED YEAST 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 1972. Complaint, Jan. 19, 1933¹—Decision, June 27, 1934.

- Where a firm engaged in the sale of its so-called "Ironized Yeast" tablets, the principal ingredient of which was yeast, and which also contained iron and two ingredients, with stimulating and laxative effects respectively, presence of which was not disclosed in the advertising or labels; in advertising their said tablets in newspapers and periodicals, and in pamphlets and circulars—
- (a) Represented that said preparation would end indigestion, constipation, and nervousness and that through its use the blood would be purified, the complexion cleared, weight, strength, and nervous force gained, and thin or emaciated persons developed and transformed into persons with normal, firm, and solid flesh whose gracefully curved forms command admiration; and
 - (b) Represented that the combination of iron and yeast in their said product had a more beneficial and effective result than the administration or use of yeast and iron separately;
- The facts being that said statements and representations were wholly false or grossly exaggerated, and in excess of any probable accomplishment through use of the preparation, which as a source of vitamin B and iron would cure the conditions for which offered only in the event that such conditions were caused by a deficiency thereof and not by serious organic ailments or diseases, or many other causes not due to said deficiencies, and there was no advantage in a combination or compound of iron and yeast compared with results accomplished through the administration of the two separately;
- With capacity and tendency to mislead and deceive, and with effect of furnishing wholesale and retail dealers with means of misleading and deceiving, the purchasing public into believing that said preparation would cure aforesaid various ailments for which offered, purify the blood, expel poisons from the system, build weight, strength, and nervous force, and transform weak into strong persons, and "skinny", scrawny, pimply persons into those with shapely and attractive forms and clear complexions, and that through the use thereof, the benefits to be derived from iron and yeast, taken separately, would be enhanced in such combination, which enabled the two mutually to serve each other in giving full effect to the virtues of both, and to induce purchase of said product in reliance on such erroneous beliefs; and
- With result of inducing persons whose symptoms or conditions were not caused by deficiency of said vitamin or iron to take and use the preparation in the erroneous belief that they were being benefited thereby through the temporary relief afforded by its stimulant and laxative qualities, and

¹ Amended complaint.

thus delay ascertainment of the true causes of their condition, through adequate medical diagnosis, until their ailments had progressed so far that, curable in their incipiency, they had become incurable or inoperable, and with capacity and tendency to, and effect of diverting trade from competitors selling similar preparations or products offered for the same purposes:

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

Mr. James M. Brinson for the Commission.

Davies, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

SYNOPSIS OF COMPLAINT.²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, J. G. Dodson, as engaged with respondent, Mrs. C. M. Dodson, in dealing in a preparation described as "Ironized Yeast", and as theretofore so engaged at various times in his individual capacity and through a corporation organized, operated, and controlled by him for such purpose, and respondent, Mrs. C. M. Dodson, engaged as aforesaid, with advertising falsely or misleadingly as to qualities, properties, results, 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.

Respondents, as charged, engaged as aforesaid, falsely represent that their so-called "Ironized Yeast" will, without qualification, aid digestion, constipation, rheumatism, and nervousness, purify the blood, clear the complexion, result in a gain in weight, strength, and nervous force, and convert thin or emaciated persons into persons with normal, firm, and solid flesh, whose graceful curved forms will command admiration, and assure all of the public afflicted with the ailments or annoyances involved that, irrespective of their origin, cause, progress, or history, they can and will be cured through the use of such preparation.

Such misrepresentations and statements are made through the following statements, among others, employed by respondents in their advertisements:

Put good solid flesh on those ugly bones. New Yeast and Iron bulds weight quickly—Imagine just three weeks to change from a "skinny" tired person to a strong well-filled-out man or woman that everybody admires. Thousands tell how ugly hollows in face and neck vanish. "Broomstick" limbs become round and chubby. Tired feeling disappears. Blemished skin clears like magic. * * * Only when Yeast is Ironized is it more effective. * * * Doctors know the value of vegetable iron and yeast in building up and improv-

² Amended.

Complaint

19 F. T. C.

ing the body. Ironized Yeast is a highly concentrated form, contains all the blood building properties of vegetable iron with yeast. It will give results in half the time required by yeast and iron taken separately. * * *

Ironized Yeast is two tonics in one—weight-building Yeast and strengthening Iron. This Yeast is treated with pure, vegetable iron. * * * Only when Yeast is ironized in this way is it more effective for iron is needed to bring out the weight-building, strengthening values of yeast. * * *

Start taking Ironized Yeast today. You will not only feel better, but you will look better, as Ironized Yeast clears out the old deadening poisons and brings new healthy color to your cheeks and sparkle to your eyes. * * * See ugly lines give way to graceful curves. Feel a new vitality and strength you haven't for years. * * *

Don't go around skinny, tired, and sallow-looking when Ironized Yeast will build you up and bring lovely, fresh color * * * quickly. New Ironized Yeast builds weight, strength, nerve force—quick. Ends constipation, indigestion, nervousness, clears complexion.

Whoopee! Rheumatism Pains and Agony all Gone. * * *

Ironized Yeast contains the blood and body building properties of yeast and iron in a new concentrated form that is nine times more effective than yeast and iron taken separately.

The facts are said preparation is not ironized yeast except in name, contains no vegetable iron nor iron in any form in sufficient amount, if at all, to be effective in cases requiring the administration thereof, nor yeast in sufficient quantity or quality to be effective when used as recommended by respondents, in cases suggesting or requiring the medical use thereof; and respondents' said statements and representations are either wholly false or grossly exaggerated and in excess of any probable accomplishment through use of the preparation in question, which has neither the life-giving or flesh-producing properties attributed to it by respondents, has not cured and cannot cure indigestion, constipation, rheumatism, nervousness, or any other disease, or purify the blood or produce weight or strength, has not and cannot accomplish the results otherwise attributed by respondents to the use thereof, and the combination of iron and yeast in no way increases the utility or value of either ingredient, since those who need the administration of iron do not always need that of yeast or vitamin B, or other elements thereof, or vice versa, and the two substances are adapted to and useful for certain remedial purposes which are by no means identical and may be entirely different.

Respondents further, as charged, have made it their practice, in order to illustrate and emphasize the merits of their said preparation and the results attributed by them to the use thereof, to display and feature purported "before and after" pictures, or photographs purporting to illustrate through individuals displayed, results accomplished by the use of the preparation in question, exhibiting emaciated persons and the same persons, purportedly, as strong

and robust individuals with graceful and shapely figures, resulting from their use of respondents' said preparation, the facts being that the pictures or photographs in question were not of the same individuals before and after using such ironized yeast.³

Respondents further, as charged, have made it their practice, as a further inducement to the purchase of their said product, to represent falsely that the purchase price thereof will be returned to any one not delighted with its effects, after the use of a "full sized treatment", the facts being they return to purchasers in such cases only the price of the first package of the preparation used, and one package does not constitute such a treatment, according to the course outlined by respondents, for accomplishment of any satisfactory result.

Such acts and practices, as charged, have had and have the capacity and tendency to mislead and deceive, and have furnished and furnish dealers, wholesale and retail, with the means to mislead and deceive, the purchasing public into the belief that said preparation can and will cure indigestion and the other ailments for which offered as aforesaid, and can and will purify the blood and accomplish other results attributed to it as hereinabove set forth, and that through use thereof, the benefits of iron and yeast, taken separately, will be enhanced through the combination thereof in the product in question, which enables the two ingredients mutually to serve each other in giving full effect to the virtues of both and to influence purchase of said preparation in reliance on such erroneous belief, and such acts and practices, further, have had and have the capacity and tendency to disparage products of competitors and to divert trade to respondents from competitors selling similar products as to composition, or products offered for the same purposes; 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 Commis-

³ Thus, in respondents' advertisements there are depicted purported before and after pictures of a girl, with such captions as "So skinny she could not work—Gains 21 pounds and new strength", and a statement attributed to such individual elaborating upon the results attributed to such preparation; of a person with the caption, "Minister run down in health gains 7 pounds in 3 weeks"; of a "Young Mother, once thin, weak, gains 5 pounds and new strength"; of a "School Teacher (who) quickly gains 18 pounds and new energy"; of a "Nurse (who) gains 7 pounds in 2 weeks"; and of a "College Girl (who) tells how she cleared skin and gained 12 pounds"; the facts being that the pictures or photographs in question were either pictures or photographs of other individuals who had not been using the preparation, or fanciful pictures designed to exaggerate the merits, if any, of such preparation and thereby influence its purchase.

Findings

19 F. T. C.

sion, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent J. G. Dodson trading under the name and style of Ironized Yeast Company charging him with unfair methods of competition in interstate commerce in violation of the provisions of the said act to which complaint he duly filed his answer wherein it was alleged that since April 1, 1930, the business theretofore conducted by him as Ironized Yeast Company had been, was, and is a copartnership consisting of himself and his wife, Mrs. C. M. Dodson.

In the course of a hearing before the examiner of the Commission theretofore duly appointed for such purpose, it appeared that Ironized Yeast Company was and is the trade name of a copartnership consisting of respondent J. G. Dodson and his wife Mrs. C. M. Dodson, as alleged in the complaint. Thereupon an amended complaint was issued and served upon respondents J. G. Dodson and Mrs. C. M. Dodson charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act. Several hearings having been had before issuance of the said amended complaint, it was stipulated by and between Mrs. C. M. Dodson in her own capacity and attorneys for the respondents J. G. Dodson and Mrs. C. M. Dodson on the one hand and the Federal Trade Commission by its trial attorney in this proceeding on the other hand that Mrs. C. M. Dodson waived service of the amended complaint and notice of all hearings theretofore had in this proceeding, that the appearance of the attorneys for respondent J. G. Dodson might be deemed to be entered as the appearance for the respondent Mrs. C. M. Dodson as of the date of the filing of his answer, that the respondent Mrs. C. M. Dodson be deemed to have been and to be a party to this proceeding to the same degree and extent as fully and for all intents and purposes as if she had been made a party to the original complaint, that the evidence theretofore taken in this proceeding should be regarded as evidence for and against the said Mrs. C. M. Dodson to the same extent as if she had been a party from the outset of this proceeding, and that the acts of the attorneys for respondent J. G. Dodson from the beginning of this proceeding shall be considered and regarded as the acts of the attorneys for respondent Mrs. C. M. Dodson. Thereafter respondents filed their answer and hearings before the examiner proceeded, testimony and evidence were received in support of the charges of the amended complaint and on behalf of the respondents, and all of such testimony including that taken prior to amended complaint and amended answer was reduced to writing and filed in the offices of the Commission.

Thereupon this matter having come on for final hearing before the Commission on the amended complaint and the amended answer, the testimony and evidence, briefs and oral arguments by counsel for the Commission and counsel for respondents and the Commission having considered the record and being fully advised in the premises and finding that there is public interest in this proceeding now makes this its report in writing in which it states its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents J. G. Dodson and Mrs. C. M. Dodson are individuals trading as Ironized Yeast Company, with their office and principal place of business in the city of Atlanta in the State of Georgia. Until 1922, respondent J. G. Dodson conducted the business of selling a product described as "Ironized Yeast" under the trade name of the "Ironized Yeast Company." On or about March 1, 1922, he caused the said business to be incorporated under the laws of the State of Georgia, and from and after such incorporation the business was conducted as a corporation known as the "Ironized Yeast Company." It was owned, dominated, and controlled by respondent J. G. Dodson and served solely as a corporate instrumentality or means for his conduct of such business. On or about April 30, 1929, the said corporation was dissolved and its charter surrendered, and from such date until March 31, 1930, respondent J. G. Dodson again conducted the said business as an individual using as his trade name the "Ironized Yeast Company." On or about April 1, 1930, respondent J. G. Dodson transferred the said business to a copartnership consisting of himself and Mrs. C. M. Dodson, his wife, and from that date to the present time the said business has been operated by such copartnership under the name the Ironized Yeast Company.

Respondent J. G. Dodson, prior to the information of such copartnership and for many years theretofore either through the corporation the Ironized Yeast Company which he owned, dominated, and controlled as aforesaid, or by or under his trade name the Ironized Yeast Company offered for sale and sold, and since the formation of such copartnership respondents J. G. Dodson and Mrs. C. M. Dodson, his wife, have offered for sale and sold and are now offering for sale and selling, in commerce among or between the various States of the United States, a so-called tonic treatment in the form of tablets, designated, and described as "Ironized Yeast." Prior to such copartnership respondent J. G. Dodson caused and thereafter respondents J. G. Dodson and Mrs. C. M. Dodson, his

wife, have caused and now cause such product, when sold, to be transported from the aforesaid place of business in the city of Atlanta and State of Georgia, to purchasers thereof located in the various States of the United States other than the State of Georgia.

In the course and conduct of such business prior to the formation of such copartnership, respondent J. G. Dodson, trading under the name and style of the Ironized Yeast Company, and afterwards through the corporation Ironized Yeast Company which he owned and controlled, has been and was, and since the formation of said copartnership respondents J. G. Dodson and Mrs. C. M. Dodson, likewise trading under the name and style of the Ironized Yeast Company, have been, were, and are, in competition with individuals, partnerships, and corporations offering for sale, selling, transporting, or causing to be transported, similar products in like commerce, and with individuals, partnerships, and corporations offering for sale, selling, transporting or causing to be transported, in such commerce, products consisting of, containing, or featuring iron or yeast, or iron and yeast in combination, or products designed for, or adapted to or useful for, the same purposes, or some of them, for which respondents sell Ironized Yeast.

PAR. 2. It has been and was the practice of respondent J. G. Dodson, when operating through his corporate instrumentality the Ironized Yeast Company or in his individual capacity under the trade name the Ironized Yeast Company, and it has been, was, and is the practice of respondents J. G. Dodson and Mrs. C. M. Dodson, as a copartnership, under the trade name and style of Ironized Yeast Company, to solicit the sale of his, its or their product Ironized Yeast by causing it to be advertised in newspapers and other periodicals which have had and have a circulation in and through the various States of the United States, and also in pamphlets and circulars which have been and are distributed among customers and prospective customers in various States of the United States. In such advertisements, periodicals, pamphlets, and circulars respondent J. C. Dodson used, prior to formation of the copartnership described in paragraph 1 hereof, and since the formation of such copartnership respondents J. G. Dodson and Mrs. C. M. Dodson have used false statements and false representations to the effect that Ironized Yeast will end indigestion, constipation, nervousness and that by its use the blood will be purified, the complexion cleared, weight, strength, and nervous force gained, thin or emaciated persons developed, converted or transformed into persons with normal, firm, and solid flesh, whose gracefully curved forms will command admiration. Such false statements and representations have been and are accom-

panied by no qualifications, reservations, or exceptions but have assured all of the people afflicted with the said diseases, troubles, or physical deficiencies or annoyances irrespective of their origin, cause, progress or history, that they can and will be ended by or through the use of Ironized Yeast.

The words used by respondents in their advertisements to describe the value of their product and the results of its use have been and are the words "end", "vanish overnight", "disappear overnight" or "go away" or "to free from", each of which has signified and meant and means that Ironized Yeast has been and is an effective cure for the diseases or conditions hereinabove mentioned.

They have also represented and still represent that the combination of iron and yeast in their product has a more beneficial and effective result than the administration or use of yeast and iron separately.

In truth and in fact the above and foregoing statements and representations by respondents have been and are wholly false or grossly exaggerated, and in excess of any probable accomplishment by means of the use of Ironized Yeast. This product is a source of vitamin B and iron. Its principal ingredient, yeast, is one of the richest sources of vitamin B. It is sold in bottles containing 50 tablets. Eight tablets are recommended as a minimum and 12 as the maximum daily dosage. It is sold for \$1 per bottle. Each tablet weighs 8 grains and contains the following: $3\frac{1}{2}$ grains of concentrate of vitamin B complex, 3 grains of dry brewer yeast, one eighth grain of reduced iron, one half grain of iron peptonate, one fourth grain powdered hemoglobin. The concentrate of $3\frac{1}{2}$ grains of yeast represents the vitamin B potency of $24\frac{1}{2}$ grains of high-grade yeast. It is a concentrate produced by a process designated and described by scientists as the Seidell process. The minimum dosage of eight tablets is the equivalent of 220 grains in yeast, which is the average dose of yeast for the prevention of pellagra. The label on the bottle and legend on the carton in which the bottle is enclosed describe Ironized Yeast only as "A reliable Iron Tonic combined with Yeast—Stimulates the appetite—Easy-to-take tablet form."

The diseases which respondents represent the use of Ironized Yeast will cure and the physical conditions of the human body which they represent its use will correct or transform are each produced by a great many causes, neither directly nor indirectly relating to either vitamin B or iron. A deficiency of vitamin B or iron may produce the diseases or physical conditions or some of them, but Ironized Yeast cannot and does not serve any useful purpose in the treatment of such diseases or physical conditions unless they are the result of or produced solely by a deficiency of vitamin B or of iron.

Findings

19 F. T. C.

Should there be such a deficiency, not only of vitamin B and iron but of other vitamins or essential elements, Ironized Yeast could supply only a small portion of it, as one vitamin cannot supply a deficiency of any other vitamin or cure or relieve diseases or conditions not caused by its own deficiency.

As a result, Ironized Yeast as an agent for the treatment of the diseases mentioned or for physical changes or transformations in those cases where there is a deficiency of vitamin B or of iron attended by a deficiency of other vitamins or other elements is useless, except to a negligible extent.

All of the vitamins are necessary either to restore or maintain normal health and strength. A deficiency of any of them will materially affect the health of a person and may even produce his or her death. Yet Ironized Yeast is not known definitely to furnish any other vitamin than B or to supply any vitamin deficiency except that of B, in connection with the diseases represented in their advertisements as curable through use of such product.

Recourse to foods which nature so prodigally supplies is the appropriate course for an individual suffering from a deficiency of any of the vitamins. Self-diagnosis, however, or self-determination of the cause or causes of indigestion, constipation, nervousness, skin eruptions, fatigue or scrawiness, emaciation or other troubles mentioned by respondents in the advertisement of Ironized Yeast is impossible. Self-diagnosis or self-determination regarding a deficiency of vitamins is impossible. The cause of every one of such diseases or conditions can be determined only by a competent physician for no other than such physician can determine whether or not the conditions manifested by the individual are produced by a deficiency of any particular vitamin or by one or more of the great many other causes by which such conditions may be produced.

There have been persons examined by physicians without discovery of any symptoms of organic or other diseases except the tired feeling, run down condition, loss of appetite and weight or other symptoms usually reflecting Vitamin B deficiencies, and such physicians have prescribed Ironized Yeast and thereafter have observed either relief from or improvement in such conditions which they attributed to the use of Ironized Yeast.

There are also numerous diseases, the symptoms of which resemble or are identical with conditions which respondents declare the use of Ironized Yeast can cure. Such diseases as cancer, diabetes, tuberculosis, anemia, malaria, thyroid troubles and many others are attended by the so-called tired feeling and other conditions described in the advertisements of respondents and with some of them are associated nervousness and constipation. None of such diseases is

caused by deficiency of vitamin B or iron and Ironized Yeast can help none of them. While the product itself is not dangerous, the representations of respondents in respect to it presented through their advertisements are dangerous. They may and probably do and will induce persons suffering from such diseases in their incipiency to use Ironized Yeast because they are unaware of their condition, have consulted no physician and rely on the false and misleading representations of respondents as to the ability of Ironized Yeast to cure them. They purchase Ironized Yeast believing that they can recover and be restored to normal health and strength. Respondents in the circular sold with Ironized Yeast advise that it be used "until your condition is corrected", employing their own language. As the result, persons whose tired feeling and other conditions result neither directly nor remotely from a deficiency of Vitamin B or iron but who commence the use of Ironized Yeast as above indicated are led by the advertisements of respondents to continue its use until the diseases from which they are suffering which in their incipiency might have been cured by appropriate treatment have progressed so far that they have become incurable or inoperable.

Continuation of the use of Ironized Yeast by such class of users and others is facilitated by respondents by their incorporation among the ingredients of their products as hereinabove set forth, of nux vomica, which contains strychnin, which is a nerve stimulant, and of phenolphthalein, which is used as a purgative or laxative. The presence of nux vomica and phenolphthalein in the product has been and is disclosed neither on the label of Ironized Yeast nor in the advertisements of respondents, and concealment or withholding of such important ingredients while attributing the virtue and effect of Ironized Yeast to the iron and yeast is deceptive. Users of Ironized Yeast feeling better on account of the stimulation of their nerves by the nux vomica or by its effect as a tonic on the one hand and by the daily use of phenolphthalein, the laxative, on the other hand, are encouraged from day to day to believe that Ironized Yeast is curing them when in fact unless the diseases are produced by a deficiency of vitamin B or iron in their diet, sufferers from such diseases receive only a temporary effect. If they are suffering from one of the diseases above mentioned which is unrelated to vitamin B or iron, their condition is gravely threatened by the continued or prolonged use of Ironized Yeast and the consequent failure to receive appropriate treatment.

There is no advantage in the combination of iron and yeast in one compound. Such combinations cannot and does not produce more effective or beneficial results than the administration of iron and yeast separately.

Order

19 F. T. C.

PAR. 3. There have been for several years last past and now are many individuals, partnerships and corporations offering for sale and selling in commerce among and between the various States of the United States in competition with Ironized Yeast products consisting of, containing or featuring iron or yeast or iron and yeast in combination, or vitamin B.

PAR. 4. The acts and practices of respondents set out in paragraph 2 hereof have had and have the capacity and tendency to mislead and deceive, and they have furnished and furnish dealers, wholesale and retail, with the means to mislead and deceive, the purchasing public into the belief that Ironized Yeast can and will cure indigestion, constipation, nervousness and that it can and will purify the blood, expel poisons from the system, build weight, strength and nervous force, transform weak into strong persons, "skinny" scrawny, pimply persons into persons with shapely and attractive forms, and clear complexions, and that by use of Ironized Yeast, the benefits to be derived from iron and yeast separately taken can and will be enhanced through the combination employed in the product of respondents, which enables the iron and yeast mutually to serve each other in giving full effect to the virtues of both, and to induce the purchase of respondents' product in reliance on such erroneous belief.

The said acts and practices of respondents have had and have the capacity and tendency to divert trade to respondents from competitors selling similar products in interstate commerce or products consisting of, or containing, or featuring iron, or yeast, or both of them, or other products offered for sale or sold for the same purposes for which Ironized Yeast has been and is offered for sale by respondents, as described in paragraph 2 hereof.

CONCLUSION

The acts and practices described in paragraph 2 hereof are all to the prejudice of the public and of respondents' competitors, and have been, and are unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress 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 on amended complaint issued and served upon respondents J. G. Dodson and Mrs. C. M. Dodson, trading under the name and style of Ironized Yeast Company and

Order

answer thereto, testimony, evidence, briefs and arguments of counsel for the Commission and counsel for respondents and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion drawn therefrom, that said respondents have been and are violating the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That respondents J. G. Dodson and Mrs. C. M. Dodson trading under the name and style of Ironized Yeast Company, or severally or jointly trading under their own names or under any other names, their employees and agents, in connection with offering for sale or selling their product known as Ironized Yeast or any other product of the same or substantially the same composition and ingredients in interstate or foreign commerce or in the District of Columbia, cease and desist from representing in magazines, trade journals, newspapers, or in other periodicals or in house organs, pamphlets, or in radio broadcasts, or in any other advertising matter by words or pictures, directly or indirectly, expressly or impliedly, specifically or in substance—

(1) That use of Ironized Yeast can or will end, cause to go away or to vanish over night or disappear over night, indigestion, constipation, nervousness, the tired feeling, or skin eruptions, or that Ironized Yeast can and will free users thereof from such diseases, or that by use of Ironized Yeast such diseases or conditions can and will be cured or relieved, except when they result from or are produced by a deficiency of vitamin B or of iron or of both of them.

(2) That skinny or scrawny persons or those deficient in shape or form can or will by use of Ironized Yeast develop well-rounded and curved limbs and otherwise become transformed into shapely persons, or that Ironized Yeast furnishes the means for attainment of beauty or attractiveness, except in so far as the health of persons which have been impaired by deficiencies in vitamin B or in iron or in both may be improved and appetite and weight gained, by the use of Ironized Yeast.

(3) That by combination of iron and yeast in Ironized Yeast it is more effective or produces better or more beneficial results than yeast and iron used separately.

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

IN THE MATTER OF

MINNIE L. FLOURNOY AND MATTIE FLOURNOY, TRADING AS C. J. MOFFETT MEDICINE COMPANY

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

Docket 2110. Complaint, May 23, 1934¹—Order, July 20, 1934

Consent order requiring respondents, in connection with the sale or offer in interstate commerce of their "Dr. Moffett's Teethina Powder", to cease and desist from representing, directly or by implication, that said product—

- (a) Has been used for three generations in its present form, is endorsed by doctors or nurses, is the original formula discovered by Dr. C. J. Moffett, or one prepared by a baby specialist, or has any miraculous curative powers;
- (b) Regulates the stomach or liver or insures healthy sleep, or will relieve stomach or bowel trouble, without restricting such last claim to certain conditions as in the order specified;
- (c) Will prevent, cure or relieve certain diseases and conditions of infants, including "liver trouble", "dangerous illness", and others. or "colds", "high fever", or "feverish conditions", without restricting such last claim as in the order specified; and
- (d) Is efficacious in the treatment or cure of diarrhea or has therapeutic value in the treatment or relief of constipation, without limiting such claims as specified.

Mr. PGad B. Morehouse for the Commission.

Mr. Daniel R. Forbes, of Washington, D. C., and *Hatcher & Hatcher*, of Columbus, Ga., for respondents.

COMPLAINT¹

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 Minnie L. Flournoy and Mattie Flournoy, and each of them, copartners, trading under the name and style of C. J. Moffett Medicine Company, have been or are 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents Minnie L. Flournoy and Mattie Flournoy are copartners, trading under the name and style of C. J. Moffett Medicine Company, with their principal place of business

¹ Amended.

in the city of Columbus, State of Georgia, and for more than two years last past have been there engaged in the sale and distribution of a proprietary medicine in the form of a powder known and sold under the trade name "Dr. Moffett's Teethina Powder", an alleged remedy for various diseases and ill conditions of infants. Respondents cause said product when sold to be shipped from their place of business aforesaid through and into various other States of the United States to wholesale druggists and grocers and to retail and chain drug stores for resale to the ultimate consumer, and in a few cases, sales are made direct to consumers by respondents.

Teethina powder is purchased by respondents in bulk from George H. Salzgeber, of St. Louis, Mo. It is compounded by him in lots or "batches" of about 60 pounds each, according to the following formulae:

| Ingredients | Quantity | Ingredients | Quantity |
|-------------------------|------------|--------------|---------------------|
| Bismuth subnitrate..... | 20 pounds. | Cassia..... | 8½ pounds. |
| Sodium citrate..... | 15 pounds. | Calomel..... | 9½ ounces. |
| Chalk..... | 15 pounds. | Sugar..... | 2 pounds 14 ounces. |

By respondents this mixture (insoluble in water) is repackaged in small papers, placing twelve papers in a box, for sale to the ultimate consumer for 30 cents a box and is administered principally to infants with the moistened finger placed upon the tongue of the child, or with syrup or jelly.

In the course and conduct of their business as aforesaid, respondents and each of them, are in competition with other individuals, partnerships, and corporations engaged in the sale and distribution, in interstate commerce, of other medicines, remedies and laxatives, efficacious in the prevention, treatment or relief of various similar diseases and ill conditions of infants.

PAR. 2. In the course and conduct of their business as aforesaid, by the use of various advertising media such as newspapers, booklets, circular letters, and other printed matter, all used in soliciting and promoting the sale of the aforesaid product in interstate commerce, respondents have represented and do represent extravagantly and falsely, to the public, both by direct statement and by implication, that "Teethina is a famous prescription", "For three generations it has been used to relieve colic, indigestion, colds, gas constipation, diarrhoea, and such baby ills", "Endorsed by doctors, nurses * * *", "It gently cleanses and regulates the little stomach, and insures restful, healthy sleep", "Teethina gently * * * and positively regulates baby's liver, bowels, and intestines;

Complaint

19 F. T. C.

correcting digestion, colic * * * diarrhoea and other stomach disorders", "Teethina, a formula discovered by Dr. C. J. Moffett, an A. M. A. Baby Specialist, will quickly and safely regulate baby's bowels, liver and intestines; and not only that, it prevents food fermentation and stops decomposition of fecal matter in the entire intestinal tract." Certain of the circular matter mailed to prospective customers in different States of the United States contained the statement "Every day we get new evidence of the almost miraculous curative powers of Teethina." And in the foregoing and various and divers other ways respondents have represented and do represent that the aforesaid product, when administered according to directions, is efficacious in the prevention, relief, treatment, or cure of the following diseases and ill conditions of infants, to wit:

| | |
|-------------------|------------------------------------|
| Stomach trouble | Liver trouble |
| Bowel trouble | Dangerous illness |
| Colic | Indigestion |
| Colds | Gas |
| Constipation | Diarrhoea |
| Cholera infantum | High fever and feverish conditions |
| Gum inflammations | |

In truth and in fact the said product has not been endorsed by reputable doctors or nurses; is not a famous prescription discovered by Dr. C. J. Moffett, an American Medical Association baby specialist, nor by any other physician; the said product as now manufactured and sold has not been used for three generations; the said product is not composed of ingredients, either singly or in combination having the therapeutic or medicinal properties represented as aforesaid; Teethina powder will not cure or correct or relieve colic, indigestion, diarrhoea, or other baby ills regardless of the causation and conditions of such ills, and will not positively regulate baby's liver, bowels, and other stomach disorders regardless of the causation and condition thereof, and will not in all instances cleanse and regulate the stomach, or insure restful, healthful sleep, and while it contains ingredients which have laxative, antacid and carminative properties, it is not in truth and in fact efficacious in the prevention, relief, treatment, or cure of any of the aforementioned diseases and ill conditions of infants and in many of such conditions could not safely be used without competent medical advice.

PAR. 3. Prospective ultimate purchasers believing and relying upon the truth of respondents' aforesaid exaggerated, false, and misleading statements buy Dr. Moffett's Teethina Powder from the wholesalers and retailers as aforesaid and the foregoing extravagant, false and misleading representations and each of them are calculated, and have the tendency to mislead and deceive purchasers, and prospective pur-

chasers, of respondent's product into the erroneous belief that its use in the manner aforesaid will serve to prevent or remedy the occurrence of these diseases or ill conditions in infants; and to induce the purchase by consumers in reliance upon such erroneous belief; and to divert trade from and otherwise injure competitors of respondents.

PAR. 4. The above acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on to be heard by the Federal Trade Commission upon the amended complaint of the Commission herein issued and respondents' answer thereto waiving all further proceeding and, pursuant to paragraph (2) of Rule III of the Commission's Rules of Practice, consenting that the Commission may make, enter and serve upon them, and each of them, an order to cease and desist from the method or methods of competition in said amended complaint alleged—

It is now ordered, That the respondents, Minnie L. Flournoy and Mattie Flournoy, and each of them, in connection with the sale or offering for sale in interstate commerce of a proprietary medicine in the form of a powder, known and sold under the trade name, "Dr. Moffett's Teethina Powder", do cease and desist from representing, directly or by implication, as follows:

- (1) That in its present form it has been used for three generations;
- (2) That it is endorsed by doctors or nurses;
- (3) That in all cases, it regulates the stomach or insures restful, healthy sleep;
- (4) That it regulates baby's liver;
- (5) That it corrects or will relieve indigestion, colic, stomach or bowel trouble without restricting such claims to those conditions when caused by gaseous irritation, excessive acidity or improper feeding;
- (6) That it is the original formula discovered by Dr. C. J. Moffett, or a formula prepared by a baby specialist;
- (7) That it prevents food fermentation or stops decomposition of fecal matter in the intestinal tract;
- (8) That it has any miraculous curative powers;

Order

19 F. T. C.

(9) That it will prevent or cure any of the following diseases or ill conditions in infants, namely: "liver trouble", "dangerous illness", "cholera infantum", "gum inflammation";

(10) That it will relieve any of the following diseases or ill conditions in infants, namely: "liver trouble", "dangerous illness", "cholera infantum" or "gum inflammation";

(11) That it will prevent, cure or relieve any of the following diseases or ill conditions in infants, namely: "colds, high fever or feverish conditions," without restricting such claims to those diseases or ill conditions when due to temporary constipation or excessive acidity.

(12) That it is efficacious in the treatment or cure of diarrhea without restricting such claim to diarrhea when due to improper feeding;

(13) That it has any therapeutic value in the treatment or relief of constipation, without limiting such claims to temporary constipation; or that it has any therapeutic value in the treatment or relief of "gas" except as a laxative and carminative with antacid properties.

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

Complaint

IN THE MATTER OF
LINCOLN EXTENSION UNIVERSITY, INC.

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

Docket 2185. Complaint, May 22, 1934—Order, July 20, 1934

Consent order requiring respondent, its officers, etc., in connection with the sale, offer and advertisement of its course in factory management and salesmanship in interstate commerce and the District of Columbia, to cease and desist from—

- (a) Using or causing to be used, directly or indirectly, the word or words "University" or "Extension University" as part of its corporate name, or in connection with any other corporate or trade name;
- (b) Representing, directly or by implication, that prospective student purchasers, after completion of its course, would be college or university graduates, and that it was equivalent to what was commonly known and understood by the public as a university, or an extension thereof;
- (c) Representing, directly or by implication, to prospective student purchasers that their names had been given to it by the management of a factory or other place of employment, or that if they would purchase its said course and make sufficiently good grades, they would be promoted at an increase in compensation, or, failing so to do, would not be considered in this connection; and
- (d) Representing the financial value of its course in words or figures which are fictitious, or grossly exaggerate the true worth thereof, directly or by implication, to prospective student purchasers.

Mr. Morton Nesmith for the Commission.

Mr. Sylvan E. Hess, of St. Paul, Minn., for respondent.

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 Lincoln Extension University, Inc., a corporation, has been and 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. Lincoln Extension University, Inc., is a corporation formerly organized, existing, and doing business under and by virtue of the laws of the State of Delaware, but later reincorporated, existing and doing business under the laws of the State of Ohio, with its offices and principal place of business in the city of Cleveland, State

of Ohio. It is now, and for more than two years last past has been engaged in the sale and distribution of books, pamphlets, and other printed and written matter by it alleged to comprise courses of instruction in factory management and salesmanship, causing the same when sold to be shipped from its principal place of business aforesaid through and into various other States of the United States to purchasers thereof. In the course and conduct of its business as aforesaid, respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of other books, pamphlets, and other written and printed matter comprising kindred courses of instruction, by the general public commonly known as correspondence schools.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, through its salesmen, by direct mail advertising, and by newspaper advertising solicits prospective student purchasers to buy its said books, pamphlets, and other printed and written matter, distributed and sold to them either over a period of five years for a cash price of \$78—for a price of \$93.60 if paid within one year and for a price of \$104 if paid for otherwise; or over a period of two years (by respondent described as its short course) for a price of \$45 if paid within 90 days—\$55 if paid within one year and \$60 if paid in \$2 monthly installments. During the course of such solicitations respondent, through the use of the words “university” and “university extension” falsely represents and has falsely represented to the prospective student purchasers that after completing the alleged course of instruction they would become and be college or university graduates; and that said respondent corporation is the equivalent of what is commonly known and by the public generally understood to be a university or an extension thereof—an educational institution organized for teaching and study in the higher branches of learning, conferring degrees in such departments as theology, law, medicine, and the arts and sciences; and that the particular books, pamphlets, and other written and printed data comprising the course of instruction offered for sale to the prospective student purchasers constitute an extension or home-study department of such an institution in the subjects of factory management and salesmanship; for example, respondent includes in its inducements held out to such prospective student purchasers the following specific false representation:

An ordinary common school education is absolutely all one needs to tackle this training service, but at the end of it (referring to the aforesaid course of instruction) a Lincoln Man can rub shoulders with college graduates and be accepted as one of them.

Complaint

As a matter of fact respondent corporation is not the equivalent of what is known as a university nor do the books, pamphlets, and other printed and written data offered by it for sale and sold, comprise an extension of any university; and it is not and has not been the equivalent of an educational institution organized for teaching and study in the higher branches of learning. It does not and has not conferred degrees in such departments as theology, law, medicine, the arts and sciences or any of them, and the books, pamphlets and other written and printed data aforesaid do not constitute an extension or home-study department of any such an institution in the subjects of factory management and salesmanship; and student purchasers upon completion of the said courses of instruction do not become nor have ever been generally accepted as college or university graduates.

Upon completion of the course a student purchaser receives a "certificate of graduation" reading as follows:

Lincoln Extension University, Inc.,
Cleveland, Ohio, U. S. A.

This certifies that ----- has satisfactorily completed the subjects taught in our course of ----- and in evidence thereof is awarded this

CERTIFICATE OF GRADUATION

Given under the seal of the University in the city of Cleveland, Ohio, this 25th day April, A. D., 1929.

-----Secretary

[SEAL]

-----President
-----Director of Instruction

PAR. 3. In the course and conduct of its business as aforesaid, respondent by its agents and salesmen has falsely represented to prospective student purchasers that the names of such prospective student purchasers had been given it by the management of a factory or other place of employment, thereby causing the said prospective student purchaser to believe that if he were to purchase the books, pamphlets, and other written and printed data comprising the alleged courses of instruction as aforesaid, his prospects for either employment or promotion would be bettered; that the respondent had communicated with companies by whom the prospective student purchasers were employed and that if they would make said purchase and make sufficiently good grades, they would be promoted and

receive increased pay; and that if they did not do so, their employers would not consider them for promotion and as a result of such statements and representations many prospects were enrolled as students, when in truth and in fact no such statements and representations had been made by such companies to the respondent or its salesmen.

PAR. 4. In the course and conduct of its business as aforesaid, respondent falsely represented and grossly exaggerated to prospective student purchasers the value of the course in the words and figures following:

Could not you too manage to spare just a few dollars for just a few weeks with that same certainty that it will add \$10, then \$25, then \$50, eventually \$100 a month and more to your regular earning power? The knowledge and power you will get from this training service should certainly add at least an average of \$100 a month to your earnings for the rest of your working life. In only twenty years this will amount to \$24,000 which you would not have earned without the training service.

when in truth and in fact there was no such certainty, and all this respondent well knows.

PAR. 5. Each and all of the representations set forth in paragraphs 2, 3, and 4 hereof are false and misleading, have the tendency and capacity to deceive prospective student purchasers and to induce them to buy respondent's said books, pamphlets, and other written and printed matter comprising the so-called courses of instruction in and on account of a belief that said representations are true; and in that manner tends to divert trade from and otherwise injure competitors of respondent.

PAR. 6. The acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, and constitute unfair methods of competition 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 coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission and respondent's answer thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to Rule III of the Commission's Rules of Practice, as amended and revised to June 1, 1932, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods

of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondent, Lincoln Extension University, Inc., its officers, directors, agents, representatives, servants and employees, in connection with the sale, offering for sale, and advertisement of its course of instruction in factory management and salesmanship, in interstate commerce and in the District of Columbia, cease and desist from:

(1) Directly or indirectly using or causing to be used the word or words "University" or "Extension University" as a part of its corporate name, or in connection with any other corporate or trade name.

(2) Directly or by implication representing that prospective student purchasers, after the completion of its course of instruction, would become or be college or university graduates, and that respondent is the equivalent of what is commonly known, and by the public generally understood, to be a university, or extension thereof.

(3) (a)—Directly or by implication representing to prospective student purchasers that their names had been given respondent by the management of a factory or other place of employment, leading said prospective student purchasers to believe that if they purchased respondent's course of instruction their prospect of promotion or employment would be better.

(b)—Directly or by implication representing to prospective student purchasers that if they would purchase respondent's said course of instruction and make sufficiently good grades, they would be promoted and receive increased pay, and, in the event they did not do so, their employers would not consider them for promotion.

(4) Directly or by implication representing to prospective student purchasers the monetary or financial value of its course of instruction in words or figures which are fictitious or which grossly exaggerate its true worth.

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

IN THE MATTER OF
JEAN JORDEAU, INCORPORATED, AND BERTHA
E. LEFRIE

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

Docket 2012. Complaint, July 13, 1932¹—Decision, July 23, 1934

Where a corporation, and the vice president thereof, engaged in the manufacture and/or sale of two preparations for the removal of hair, including (1) a waxlike preparation which it designated as "Zip Epilator" and which was composed partly of rosin and partly of wax, together with a little coloring matter and a small amount of calcium carbonate, and (2) a creamlike product, which it named "Zip Depilatory Cream", and which contained, among other things, a large amount of barium sulphate and a small amount of calcium hydro-sulphide,

- (a) Represented in advertisements in newspapers and magazines of large circulation, among the general public, that through use of "Zip Epilator" superfluous or unwanted hair growth would be permanently removed and the cause of such growth, and that hair would not regrow where applied, and preparation was pleasant to use, acted immediately, and brought lasting results, facts being that use thereof would not destroy cause of hair growth, nor bring lasting results in prevention of growth, and use caused pain to some; and
- (b) Represented in newspapers and magazines of large circulation among the general public that through use of said cream, superfluous or unwanted hair would be removed and would not regrow, and that use thereof was safe and harmless and left no irritation, facts being said cream would not remove hair so there would be no regrowth and was not safe or harmless in all cases, but resulted in irritation of the skin, and in dermatitis in some;

With effect of deceiving and misleading public, and purchasers of depilatories and similar waxlike products, designed for removal of unwanted hair, into believing said statements and representations to be true, and into purchasing their said products in reliance upon such erroneous beliefs, and of diverting trade in articles and preparations for removal of hair, to said corporation and individual, from competitors, many of whom sell depilatories and similar products without representing that through the use thereof hair will not regrow where applied, or that application thereof destroys cause of growth of hair or brings lasting results through preventing its growth where applied, or that use of such a waxlike product is pleasant, or the depilatory is safe or harmless or leaves no irritation and with capacity and tendency so to do:

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

¹ Amended.

Mr. Edward E. Reardon for the Commission.

Hulbert & Heermance and *Mr. Francis X. Gallagher*, of New York City, for respondents.

SYNOPSIS OF COMPLAINT¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Jean Jordeau, Inc., a New Jersey corporation, engaged in the manufacture of certain depilatory products, including a wax-like preparation, and a cream, and in the sale and distribution thereof under the trade mark or designation "Zip" to the consuming public, and to users and dealers, such as beauty parlors, drug stores, department stores and other business establishments for application or resale, and with places of business in South Orange, N. J., and New York City, and respondent Lefrie, its vice president, jointly engaged with it under the name "Madame Berthé", in the sale of the aforesaid preparations, with advertising falsely or misleadingly as to qualities, results, and endorsements thereof, and misrepresenting the same in said respects, in violation of the provisions of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, since 1925 have falsely and misleadingly represented in their advertisements of said products in periodicals, circulars and placards and through salesmen, that the waxlike preparation which is designed for removing unwanted hair through application to the body, after heating, and subsequent mechanical removal of the hair, following its hardening, will quickly and permanently destroy the hair, remove the hair roots, and thereby permanently prevent regrowth, has been used by hundreds of thousands of women for permanently destroying hair growth on the face and other parts of the body, has been tested for twenty years, met every requirement, and never failed to remove superfluous hair permanently, is pleasant to use, safe and absolutely harmless, causes no pain, inflammation, or deleterious effects or skin irritation and removes every vestige of hair and fear of later stubble or stimulated growth; facts being the roots of the hair are not destroyed by the removal of the hair through use of said waxlike product or by any effect thereof, regrowth is not prevented, but continues after successive applications and removals, preparation has not been used by hundreds of thousands of women as claimed, or met every requirement, but, on the contrary, has failed

¹ Amended.

permanently to remove unwanted hair or prevent regrowth, and is neither pleasant to use, safe or harmless, but is painful and apt to produce inflammation and other deleterious effects.

Respondents have further falsely and misleadingly represented, as aforesaid, that their said creamlike depilatory preparation, intended for removal of hair by chemical action thereof upon the hair protruding from the surface of the skin, removes every vestige of hair and eliminates all fear of later stubble or stimulated growth and will and does permanently destroy superfluous and unwanted hair and permanently prevents regrowth thereof, facts being it will not and cannot remove every vestige of hair, but in the use thereof that portion which lies within or beneath the skin is not removed or affected by its application, but remains and continues to grow and forms outgrowths of hair, and the cream does not destroy or prevent its regrowth, or eliminate later stubble or stimulated growth of hair.

Said statements, representations, and assertions, as alleged, "are false, misleading, and deceptive, and they have and have had the capacity and tendency to, and did, mislead and deceive members of the purchasing and consuming public into the erroneous belief that said representations, statements, and assertions are and were true in fact, and thereby cause and have caused purchase of said products under such erroneous beliefs", and use of such statements, etc., and numerous other false, misleading, and deceptive statements, etc., made by respondents during the aforesaid period concerning their said products and the efficacy and effect thereof "constitute and have constituted 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' aforesaid competitors in their business; and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of marketing depilatory products and other products and appliances adapted to and used for the removal of superfluous hair and other hair from the human body", and "said false, misleading, and deceptive acts, practices, and methods of respondents, under the circumstances and conditions hereinabove alleged, are unlawful and constitute unfair methods of competition in commerce."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

and served an amended 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 answer herein to the amended complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs filed on behalf of the Commission and the respondents, and upon oral argument 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 ²

PARAGRAPH 1. The respondent Jean Jordeau, Inc., is a corporation organized on or about December 31, 1919, under the laws of New Jersey. It has a place of business at South Orange, N. J., where, under the management of its president, its products are manufactured and another place of business, or a salon, at No. 562 Fifth Avenue, New York City, conducted under the name "Madame Berthé."

PAR. 2. During all the times since the year 1925 the respondents have sold, among other products of the respondent corporation, a waxlike product under the name "Zip Epilator" and since on or about March 20, 1931, they have also sold a creamlike product under the name "Zip Depilatory Cream", both products being for the removal of superfluous or other hair from the human body, to purchasers of the products residing in various States of the United States, other than New York and New Jersey, individuals, firms, and corporations, wholesale and retail dealers therein, who bought the same for resale to the public, and members of the public who bought the products for use or consumption, and the respondents during said times have caused the products when so sold by them, respectively, to be transported from New York or New Jersey or from the State of origin of the shipment thereof to, into, and through States other than New York or New Jersey or the State of origin of the shipment to the purchasers.

PAR. 3. During all the times since the year 1925 other individuals, firms, and corporations, manufacturers of, and wholesale and re-

² As amended, as to paragraphs 10 and 19, by order of September 6, 1934.

Findings

19 F. T. C.

tail dealers in depilatories and other preparations or articles employed in the removal of superfluous or other hair from the human body, have been engaged in the business of the sale of such products to members of the public located throughout the various States of the United States and they have caused the depilatories and other articles or preparations 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. 4. The respondents during all the times since the year 1925 were and now are in substantial competition in interstate commerce in the sale of the product known as "Zip Epilator" and since March 20, 1931, in the sale of the product Zip Depilatory Cream with other individuals, firms, and corporations referred to in paragraph 3 hereof.

PAR. 5. The respondent Bertha E. Lefrie is the vice president of the respondent Jean Jordeau, Inc., and is and has been in charge of the place of business or salon of the respondent, Jean Jordeau, Inc., in New York City. She is known as Madame Berthé to patrons of the salon and to purchasers of the products of respondent corporation.

PAR. 6. The respondents during all the times since the year 1925 have caused advertisements of the product Zip Epilator, and since March 1931 of the product, Zip Depilatory Cream, which were subscribed, "Madame Berthé, specialist, 562 Fifth Avenue, New York City", to be made to the public throughout the United States in publications read by the general public. The name of the respondent Jean Jordeau, Inc., did not appear in such advertisements.

The respondents since 1925 and 1931, respectively, have caused advertisements of the above products of the respondent corporation to be published to the wholesale and retail trade in trade publications which were subscribed as follows:

Please address all communications to us as follows: Madame Berthé, specialist, New York—Jordeau, South Orange, New Jersey.

PAR. 7. The respondents during all the times above mentioned in connection with the advertising and sale of the said products sent to members of the public who replied to the advertisements referred to in paragraph 6 hereof, order blank forms and business reply envelopes, self-addressed to Madame Berthé at 562 Fifth Avenue, New York City, and correspondence with such members of the public concerning the use of the products by them was carried on by the respondents from the New York City address under the name "Madame Berthé", as the seller of the said products, and not under the name of the respondent Jean Jordeau, Inc.

PAR. 8. The product sold by the respondents called Zip Epilator is composed partly of rosin and partly of wax, such as beeswax, together with a small amount of calcium carbonate and a little coloring matter. The calcium carbonate in the composition of the Zip Epilator may affect the consistency of the waxlike substance but it does not have any effect in the removal of superfluous or other hair from the human body.

PAR. 9. The directions for the use of the Zip Epilator in the removal of superfluous or other hair from the human body are as follows:

Heat slowly a quantity sufficient for a treatment. When partly melted, remove from the heat and stir until it has the consistency of thick syrup. Using the back of the tip of a spoon apply Zip in a strip in the direction in which the hairs point, having the application as thick at the edges as in the center. As soon as Zip begins to set, while still warm—*Do not allow to harden*—with one hand hold the flesh at the point where you will take hold of the application and with the other hand, grasp the Zip at one corner firmly with thumb and forefinger, pull very quickly with a jerk in the direction opposite to which it was applied.

PAR. 10. The product called Zip Depilatory Cream is a preparation containing, among other things, a large amount of barium sulphate and a small amount of calcium hydrosulphide. Calcium hydrosulphide is the active principle that is mixed with other things in respondent's Zip Depilatory Cream for the removal of hair from the human body.

PAR. 11. The respondents since the year 1925 in advertisements in newspapers and magazines having a large circulation amongst the general public throughout the United States have represented to the members of the public, purchasers, and prospective purchasers and users of the product, Zip Epilator, that by its use for the removal of superfluous or other hair from the human body, such hair growths would be permanently removed; that the cause of such hair growths would be destroyed; and that the superfluous or other hair would not regrow on the part of the body to which the Zip Epilator was applied for the removal of the hair.

PAR. 12. The respondents since on or about March 20, 1931, in advertisements in newspapers and magazines having a large circulation amongst the general public of the United States have represented concerning the product, Zip Depilatory Cream, that by its use for the removal of superfluous or other hair from the human body, the superfluous or other hair would be removed and would not regrow on the part of the body to which the Zip Depilatory Cream was applied for the removal of the superfluous or other hair.

PAR. 13. The respondents since the year 1925 in advertisements in newspapers and magazines having a large circulation among the general public throughout the United States have represented that the product, Zip Epilator, is pleasant to use and that it acts immediately and brings lasting results, and since on or about March 20, 1931, in similar advertisements, have represented concerning the use of the product, Zip Depilatory Cream, that it is safe or harmless and leaves no irritation of the skin to which it has been applied.

PAR. 14. The use of the product, Zip Epilator, to remove superfluous or other hair of the human body to remove which it is applied does not destroy the cause of the growth of the hair. It does not bring lasting results in the prevention of the growth of hair to the part of the body to which it has been applied and it does not prevent hair from regrowing on that part of the body.

PAR. 15. The use of the product, Zip Depilatory Cream, does not remove superfluous or other hair of the human body to which it is applied so that there will be no regrowth of hair on that part of the body to which the Zip Depilatory Cream was applied.

PAR. 16. The use of the product, Zip Epilator, for the removal of superfluous or other hair causes pain to some members of the public in its use for the removal of superfluous hair.

The use of the product, Zip Depilatory Cream, is not safe or harmless in all cases of its use for the removal of superfluous or other hair from the human body. In the case of the use of Zip Depilatory Cream irritation to the skin of the user would be caused and the condition of dermatitis would result in some instances to some members of the public.

PAR. 17. The respondents, in connection with the business of the sale of the products of the respondent corporation, including the statements and representations above referred to made in advertisements, represented to the public that the respondent, Bertha E. Lefrie, conducted as her own and on her own account the business done under the name of "Madame Berthé" at the place of business, or salon, of the respondent corporation at 562 Fifth Avenue, New York City.

PAR. 18. The statements and representations caused by the respondents to be made in advertisements, as above set forth, or elsewhere, to the effect that the waxlike Zip Epilator and the product, Zip Depilatory Cream, by their application to the human body would, respectively, remove superfluous or other hair growing at the place of the application so that, after such removal of the hair, hair would not again grow or regrow at the place of the application; that the product, Zip Epilator, destroys the cause of the growth of superfluous or other hair on the human body at the place where application

of it has been made, or that its application brings lasting results in the prevention of the growth of hair to the part of the human body to which it is applied; that the product, Zip Epilator, is pleasant to use in its application to the human body for the removal of superfluous or other hair; that the product, Zip Depilatory Cream, is safe or harmless in its use and leaves no irritation to the skin to which it is applied for the removal of superfluous or other hair from the human body, are each and all of them false representations of material facts in connection with the sale of the above-named products to members of the public, users or consumers thereof, and they have the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of depilatories and other products, including waxlike products similar to Zip Epilator, designed for use in the removal of superfluous or other hair from the human body, into the belief that the said statements and representations were true, and in reliance upon such erroneous belief, into purchasing the above-mentioned products sold by respondents.

PAR. 19. Among the competitors of the respondents, referred to in paragraph 3 hereof, are many who sell and cause depilatories and other products, including waxlike products similar to Zip Epilator, to be sold for use in the removal of superfluous or other hair from the human body and who, respectively, do not represent that the hair removed by the use of their products will not regrow at the place where application of their product was made to the human body; or that the application of their product destroys the cause of the growth of superfluous or other hair on the human body at the place where the application of it has been made; or that the application of their product brings lasting results in the prevention of the growth of hair to the part of the human body to which it is applied; or that the use of their waxlike products for the extraction of hair from the human body is pleasant in its application for such purpose; or that their depilatory product is safe or harmless in its use and leaves no irritation to the skin to which it is applied for the removal of superfluous or other hair from the human body.

PAR. 20. In consequence of the practices of the respondents above set forth, trade in articles or preparations for the removal of superfluous or other hair from the human body was diverted to the respondents from competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of the respondent, Jean Jordeau, Inc., and Bertha E. Lefrie, under the conditions and circumstances described in the

foregoing findings were to the prejudice and injury of competitors of the respondents 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondents to the amended complaint, testimony and evidence introduced, upon the briefs of the attorneys for the Commission and for the respondent, and upon oral argument on the part of counsel for the Commission and the respondents; and the Commission having made its findings as to the facts and its conclusion that the respondents, Jean Jordeau, Inc., and Bertha E. Lefrie, 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, Jean Jordeau, Inc., and Bertha E. Lefrie, their agents and representatives, in connection with the sale or the offering for sale in interstate commerce between and among the several States of the United States and in the District of Columbia, of the products of the respondent, Jean Jordeau, Inc., called Zip Epilator and Zip Depilatory Cream, do—

Cease and desist from representing, directly or indirectly, either verbally or by statements and representations in advertisements in newspapers, magazines, and periodicals, or otherwise; that either the product, Zip Epilator, or the product, Zip Depilatory Cream, or any other product, which the respondents or either of them may sell of substantially the same composition, by its application for the removal of superfluous or other hair from the human body, will cause such hair to be removed, so that, after its removal, hair will not again grow or regrow at the place where either of the said products was applied; that any of said products, by reason of its application for the removal of superfluous or other hair, destroys the cause of the growth of such hair at the place where the application of the product was made to the human body; or that the application of any of said products brings lasting results in the prevention of the growth of superfluous or other hair to the part of the human body to which the application of either of the said products is made; that the product, Zip Epilator, is pleasant to use for the removal of

150

Order

such superfluous or other hair; and from representing that the product, Zip Depilatory Cream, is safe or harmless in its use for the removal of superfluous or other hair from the human body and leaves no irritation of the skin to which it is applied.

It is further ordered, That the respondent, Jean Jordeau, Inc., and Bertha E. Lefrie, 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 they have, respectively, complied with this order to cease and desist.

Complaint

19 F. T. C.

IN THE MATTER OF
RAFFY PARFUMS, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2114. Complaint, Sept. 13, 1933—Decision, July 23, 1934

Where perfumes composed in France had had for many years a widespread popularity and there had been and was a substantial demand and preference among large numbers of the public for perfumes composed in and imported from said country, which usually displayed the words "Paris and France" in addition to the name of the French manufacturer on the labels of the bottles and display boxes in which sold; and thereafter a domestic distributor—

Labeled perfumes composed from concentrates produced in the United States from essential oils imported from France and other foreign countries, and not composed in France from concentrates made of essential oils in France, with such words and legends as "Adam—et—Eve—Marcel Raffy—Paris", and beneath, in smaller letters, "New York"; "Jasmin—Extra fin—Raffy—Paris"; "Chypre—Extra fin—Raffy—Paris"; "Encens—Oriental—Raffy—Paris"; and "Futuris—Raffy—Paris", and "Nuit Blue—Paris";

With effect of misleading and deceiving retail dealers and members of the public into believing said perfumes to have been composed in or near Paris and imported into the United States, and into purchasing same in reliance upon such belief in place of products of competitors in fact so composed and imported, and in place of those composed in the United States and so labeled and represented, and result of diverting trade in perfumes to said corporation from competitors, many of whom import and sell throughout the United States in the bottles and display boxes in which received, perfumes composed in or near Paris, and many of whom sell perfumes composed in the United States, and so labeled and represented; and with capacity and tendency so to mislead, deceive and divert:

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. Edward E. Reardon for the Commission.

Mr. Benjamin Siet, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action is the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in New York City in the manufacture of perfumes, toilet waters, and cosmetics, and in the sale thereof to wholesale and retail dealers throughout the United States from its factory and principal place of business in said city, with misbranding or mislabeling as to source or origin of product, in

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

Respondent, as charged, engaged as aforesaid in competition with those dealing in the domestic products and those importing such products from France, uses labels with such trade names and legends on bottles and containers of its preparations as, "Encens Oriental Raffy Paris", "Voici Paris Raffy Paris", "Chypre extra Fin Raffy Paris", "Jasmin Extra Fin Raffy Paris", and "Gardenia Raffy Paris", notwithstanding fact none of said products are made or compounded in Paris; with capacity and tendency to mislead dealers, and the purchasing and consuming public (many of whom buy the long, widely popular, perfumes made in France and imported therefrom, in preference to the products of other countries), into the belief that respondent's said products are made or compounded in said city, and induce the purchase thereof in reliance upon such erroneous belief, and thus divert trade to respondent from competitors, to their injury and prejudice and that of the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced in behalf of the Commission and the respondent 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, no one appearing for 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 the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Raffy Parfums, Inc., is a corporation, incorporated under the laws of the State of New York, and since the date of its incorporation it has been engaged in the business of the sale of perfumes in New York City.

PAR. 2. Charles P. Andrae is and has been the vice president and secretary of the respondent, Raffy Parfums, Inc., since its incorporation.

PAR. 3. From the date of its incorporation until on or about October 1933 the respondent sold its entire output of perfumes throughout the United States through the sales agency of Charles P. Andrae, above mentioned, who did business under the name Andrae Sales Company. In or about October 1933 the Andrae Sales Company was organized as a corporation under the name Andrae Sales Corporation. The sale of the respondent's products has been conducted by the Andrae Sales Corporation and its predecessor, the Andrae Sales Company, since the incorporation of the respondent on or about April 5, 1932, and during all said times the respondent through its said agents has been engaged in the sale of perfumes in interstate commerce to retail dealers throughout the United States for resale by the said dealers to members of the public for use or wear. The respondent during the above times has caused the perfumes so sold by it to be transported from New York City, N. Y., to, into, and through other States to the retail dealers above referred to.

PAR. 4. Perfumes are generally a conglomeration of odors and are produced in the form of concentrates from essential oils. The basic ingredients from which the essential oils are derived come from various parts of the world, principally from the south of France, the French colonies, and from other parts of the world, such as China, Italy, and Africa. The best and most expensive essential oils are produced in France and the concentrates from essential oils are usually produced from a great many basic ingredients, sometimes from as many as 40 to 60 different ingredients.

PAR. 5. The center of the French perfume industry is and has been for very many years located in or near Paris, France, and many of the largest French producers of perfume have and have had for very many years their places of business in Paris, France.

PAR. 6. The perfumes composed in France have had for very many years a wide-spread popularity in the United States and there has been and is now a substantial demand, among large numbers of the public throughout the United States who use or wear perfume, for the perfumes composed in and imported from France rather than for the perfumes composed in the United States or in other countries.

PAR. 7. There are and have been since long prior to the incorporation of the respondent many other individuals, firms, and corporations, located in the United States, some of whom are and have been engaged in the importation and sale of perfumes from France to retail dealers located in the various States and some of whom are and

have been engaged in the business of the composing of perfumes in the United States and in the sale of such perfumes to dealers therein located in the various States of the United States, and all of whom have, respectively, caused the perfumes so sold by them during said times to be transported from the State or origin of the shipment to, into, and through other States to the purchasers, the said retail dealers.

The respondent is and has been in substantial competition in interstate commerce during said times with the other individuals, firms, and corporations above referred to.

PAR. 8. The perfumes sold by the respondent during the above-mentioned times are and have been composed from concentrates produced in the United States from essential oils imported from foreign countries, including France.

The respondent does not import and has not imported perfumes that were composed in France from concentrates made of essential oils in France.

PAR. 9. The respondent during the times above mentioned has sold its perfumes in bottles, generally of from 1 to 4 ounces in size and in boxes containing such bottles. Among others the respondent sold a perfume which was labeled "Adam"—"et"—"Eve"—"Marcel Raffy"—"Paris", and beneath in smaller letters, the word "New York"; a perfume which had on the bottle label the words, reading from top to bottom, "Jasmin"—"Extra fin"—"Raffy"—"Paris"; a perfume which had on the bottle label, reading from top to bottom, the words, "Chypre"—"Extra fin"—"Raffy"—"Paris"; a perfume which had on the bottle label, reading from top to bottom, the words, "Encens"—"Oriental"—"Raffy"—"Paris"; and perfumes which had on the bottle labels, reading, respectively, from top to bottom, the words, "Futuris"—"Raffy"—"Paris", and "Nuit Blue"—"Paris."

PAR. 10. Among the individuals, firms, and corporations, referred to in paragraph 7 hereof, are many who import perfumes from France that are and have been composed in or near Paris, France, and the perfumes so imported are and have been sold to retail dealers, department stores, specialty shops, druggists, and wholesale dealers throughout all the United States, usually in the packages in which they are received from France consisting of bottles of perfume in sizes of from one-quarter ounce to 32 ounces, contained in display boxes in which the bottles of perfume are sold.

Such perfumes usually have on labels on the bottles and display boxes in which they are sold, the words, "Paris" and "France" besides the name of the French manufacturer.

PAR. 11. There are among the competitors of the respondent in the sale of perfume in the United States many who sell perfumes composed in the United States and who do not represent their products to have been composed in France.

PAR. 12. The respondent's use of the word "Paris" in labeling and advertising its perfumes, as above set out, has the capacity and tendency to mislead and deceive retail dealers and members of the public who purchase perfumes for use or wear and it has misled retail dealers and members of the public into believing that respondent's of said perfumes were composed in or near Paris, France, and imported into the United States and, in reliance upon such belief, into purchasing the respondent's perfumes in place of perfumes of respondent's competitors which were composed in or near Paris, France, and imported from France into the United States, and in place of perfumes of respondent's competitors which were composed in the United States and so labeled and represented, and trade in the sale of perfume was thereby diverted from respondent's competitors to the respondent.

PAR. 13. The respondent's acts and practices above set forth have the capacity and tendency to mislead and deceive the public and to divert business to respondent from its competitors and they have misled and deceive the public and diverted trade, as above set forth, to the injury and prejudice of competitors and of the public.

CONCLUSION

The practices of the respondent, under the conditions and circumstances disclosed 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, answer of respondent, testimony and evidence introduced, upon the brief of Commission's attorney; and the Commission having made its findings as to the facts and its conclusion that the respondent, Raffy Parfums, 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 the respondent Raffy Parfums, Inc., its agents and representatives, in connection with the sale or the offering for sale of perfumes in interstate commerce between and among the several States of the United States and in the District of Columbia, do—

Cease and desist, From representing, by use of the words "Paris" and "France", or either of those words on the labels on bottles or other containers or on any part of the package in which perfume is offered and sold or in any other way, that perfumes composed in the United States or elsewhere and sold or offered for sale by respondent are composed in Paris or in France unless and until such shall be true in fact.

It is further ordered, That the respondent, Raffy Parfums, Inc., 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 it has complied with this order to cease and desist.

IN THE MATTER OF
CIVIL SERVICE TRAINING BUREAU, 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 2117. Complaint, Sept. 16, 1933—Decision, July 23, 1934

Where a corporation engaged in the sale and distribution to members of the public of correspondence courses of study and instruction for civil service examinations for positions with the Government—

- (a) Employed a corporate name which included the words "Civil Service" and "Bureau" in its advertisements and otherwise, and made use of such terms in advertising as "advisors", "district advisors", "civil service district advisors", "field advisors", "registrars" and "Central States office", notwithstanding fact it was a private institution, with no connection whatever with the Civil Service Commission or the Government; with effect of creating false impressions as to some Government connection or sponsorship due to said terms, connotation, and causing persons to interview its representatives, pay money thereto and sign contracts for additional payments in ignorance of the true facts, which were inadequately disclosed through explanatory statement on receipts and contract forms, due to failure of those concerned to see, read or appreciate such statements, misleading impressions otherwise created, and the silence and in some cases actual misrepresentations of its representatives;
- (b) Referred to examinations for such positions as Internal Revenue-General Clerical, or Internal Revenue Clerk, or to a General Clerical examination, and in its advertisements referring to positions with the Government made such statements as "We can help you get one of these well-paying life-time positions", notwithstanding fact there were no such examinations as before referred to, and it had no way of assisting students in getting Government positions other than by its training for examinations;
- (c) Represented through documents prepared and distributed to salesmen that forty to fifty thousand new appointments in Government work were made each year and that there were nearly 700,000 Civil Service employees, and the Civil Service Commission was holding many different kinds of examinations annually, facts being no such number of appointments were then being made, number of employees referred to was less than 500,000 at the time, very few examinations as aforesaid were then being held and few appointments made, and such as were, were largely by transfer, reinstatement, or from register of eligibles, so that there was little if any chance for students to take an examination and secure an appointment in the lines in question;
- (d) Represented or implied that Government jobs were offered or to be had or that persons were wanted therefor, or that its advertisements were those of the Government or of a representative or agent thereof, through such statements in the classified and "help wanted" columns of the papers as "Railway postal clerks—men age 18-35, \$1,000 year to start; for free information covering qualifications * * * to try next examination write Field Advisor Box CS-26" and other similar advertisements beginning with

such captions as "men wanted", "steady work", "wanted men", "clerks", and "men" describing various Government positions or asserted positions and referring to interviews and box numbers and giving names of its representatives, without setting forth its own name or true status; and,

- (e) Employed a form of contract which it described as a "guarantee" contract, and headed with the word "guarantee" in large and conspicuous letters, facts being student was offered merely a refund agreement, available only in case of an examination and failure, and which meant nothing in view of the few examinations held, if any, in the lines in which it gave instructions; with the effect of misleading prospective students into believing they were thereby guaranteed a job;

With tendency and capacity to confuse, mislead and deceive members of the public into believing it to be a representative of or connected with the Government, and that positions were available, assured, and offered to those who complied or qualified, examinations were being held at frequent intervals, numerous appointments were being made in the civil service, positions were of life-time duration, and those who signed contracts were guaranteed jobs, it could assist in getting Government jobs for its students, and there were positions in the Government of the the kind and description for which it offered training, and to induce members of the public to answer its advertisements, sign its contracts and pay money down, contract for additional payments and pursue its courses because of erroneous beliefs engendered as above set forth, and divert trade to it from competitors engaged in sale of correspondence courses in similar and other lines of study, among whom there are those who in nowise misrepresent their identity, or relationship with the Government, or the certainty or availability of jobs, or examinations therefor, or their courses, possibilities of employment or other matters connected therewith:

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

Mr. Harry D. Michael for the Commission.

Spear & Spear, of Cleveland, Ohio, and *Mr. William E. Richardson*, 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, an Ohio corporation, engaged in the sale and distribution of correspondence courses for civil service examinations, and with office and principal place of business in Cleveland, with using misleading corporate name, misrepresenting business status, advantages or connections, and advertising falsely or misleadingly in said respects, and as to opportunities in product or service offered, and misrepresenting offering in aforesaid respects, and pretended guarantee, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Complaint

19 F. T. C.

Respondent, as charged, engaged as aforesaid, creates the false and misleading impression that (a) it is connected with or acting for the Government or some agency thereof, through (1) use of its corporate name, which includes words "Civil Service" and "Bureau" and from which it omits suffix "Inc." in cards and other literature sent to those who answer its advertisements and used in other ways, and through (2) use of such words as "advisors", "district advisors", "civil service district advisors", "field advisors", "registrars" and "central States office" in its advertisements in referring to its representatives and to its Cleveland office, and (b) that the Government is seeking directly or through its representatives, employees for various positions, through aforesaid advertisements¹ containing said designations, and beginning with such words as "railway postal clerks", "men wanted", etc., and describing Government positions or purported positions, without giving its own name, in the classified sections and "help wanted" columns of the papers; with result of inducing those desiring to work for the Government to answer the advertisements in the aforesaid erroneous impressions, have interviews with its representatives, pay money thereto and obligate themselves and sign contracts for payment of additional sums before being informed and discovering, due to aforesaid facts and its failure adequately to advise prospects of the true situation,² that it merely conducts a private correspondence school, with no connection with the Civil Service Commission, or the Government, in any other capacity.

Respondent further, as charged, printed, and circulated by mail and through its representatives, to prospective students, an advertising booklet which contained many false and misleading statements relative to civil-service positions, examinations therefor, and its ability to help its students get positions, and which exaggerated greatly or misstated number of yearly appointments, total civil-service personnel at the time, and number of examinations being held and appointments made (which, during time concerned, insofar as its type of positions were involved, were by transfer, reinstatement

¹ The various advertisements above referred to as set forth in the complaint, are reproduced *infra* in the findings at p. 172.

² As alleged in the complaint, respondent, in order to obviate liability for such misconception, placed upon the back of the receipt for the initial payment, which receipt was not given until after the contract had been signed and money paid thereon, the words "The Civil Service Training Bureau is not in any way connected with the Government", and, after a time also included in the contract signed by the student but in fine print, likely not to be noticed or read by the applicant before signing the same, or at least to reach his attention until he had been convinced of the desirability of signing, by reason of the erroneous impressions created as aforesaid, the words—"I understand the Civil Service Training Bureau, Inc., is in no way connected with the United States Government and that it or its registrar do not claim to have advance knowledge of examination dates."

ment, or from registers of eligibles sufficient to fill vacancies for a long time), and misleadingly informed prospect that it could help him get "one of these well-paying life-time positions", though it had no way of doing so other than by preparing the prospect for the examinations given, if any.³

Respondent further, as charged, offers training for examinations for specific positions, under the aforesaid general representations, for which positions there is little, if any, prospect of either examination or appointment, and also offers examinations for positions which, as described by it, are nonexistent, the positions in the former category being such as Railway Postal Clerk, Railway Mail Clerk, City Mail Carrier, Post Office Clerk, Rural Carrier and Motor Rural Carrier, Immigration Inspector and Inspector of Customs, and in the latter category, Internal Revenue Clerk and a "general clerical" examination.⁴

Respondent further, as charged, misleadingly heads a form of contract used by it with the word "guarantee" and incorporates in said contract the following provision, namely, "It is understood that I am to complete the entire training, sending in all work for correction; try the first examination covered by this training; then, if I fail to pass the examination, or pass and am not offered an appointment within one year from date that my name is placed on the Government eligible list, I am, upon written application, to receive a refund of the entire amount paid for this training," which caption, considered with other misleading representations is calculated to lead the prospective student into believing that he is guaranteed a

³ False and misleading statements in the document in question as set forth in the complaint, are also reproduced *infra* in the findings, at p. 174.

⁴ As alleged in the complaint, "the instructions given by respondent in preparation for civil service examinations are described in respondent's literature as Postal Service Training which includes the positions of Railway Postal Clerk, Railway Mail Clerk, City Mail Carrier, Post Office Clerk, Rural Carrier, and Motor Rural Carrier; Immigration and Customs Inspector which embraces Immigration Inspector and Inspector of Customs; and Internal Revenue which includes Internal Revenue Clerk and General Clerical. That respondent's general representation, as heretofore shown, include all of such positions for which it offers training. That in regard to Railway Postal or Mail Clerks there are and have been during the time respondent has conducted its said business ample eligibles for such appointments in every state and a total of about 10,000 of such eligibles. There is little, if any, chance for examination in this branch of the Civil Service in any reasonable time and very few such appointments are being made. With regard to the positions of City Mail Carrier, Post Office Clerk, Rural Carrier and Motor Rural carrier, examinations are held only occasionally and then only in the particular localities where vacancies may occur so that there could be no reasonable expectation of a person having an opportunity to take such examinations within any reasonable time. In regard to Immigrant Inspector and Inspector of Customs, few, if any, appointments are being made or have been made within the last two or three years. The United States is divided into districts for such appointments and there are from 300 to 600 eligibles in each district. There is no such position in the Civil Service as Internal Revenue Clerk and at the present time there is no general clerical examination and has not been for eight or nine years."

position in the Civil Service, and which is further misleading, since contract contains no guarantee of any kind that can reasonably be expected to call for fulfillment, the possibility of any refund under the provision quoted being remote for the reason there is very little likelihood of an examination being held in which a particular student could or would compete.

Such representations, as alleged, "have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the false belief that respondent is a representative of or connected with the Government and has positions to offer to applicants or to those who qualify; that Civil Service examinations are being held at frequent intervals and that positions are available and assured to those who qualify", and "to induce members of the public to answer respondent's advertisements, to sign its said contracts, to pay money down and to promise to pay additional sums, and to pursue said courses of instruction as herein described because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines as well as those in other lines of study"; 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, Civil Service Training Bureau, 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

PARAGRAPH 1. The respondent, Civil Service Training Bureau, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and has its office and principal place of business in the city of Cleveland in said State.

PAR. 2. Respondent is now and has been engaged since December 1931 in the sale and distribution in interstate commerce in and among the various States of the United States to members of the public of courses of study and instruction designed and intended to prepare students thereof for examinations for various Civil Service positions under the United States Government, which said courses of study and instruction are pursued by correspondence. Respondent in the course and conduct of its said business causes its said courses of study and instruction, consisting of pamphlets, study and question sheets, and other printed matter and literature, to be transported in interstate commerce from its said place of business in Ohio, to, into, and through States of the United States other than Ohio to various and numerous persons to whom said courses of study and instruction are or have been sold.

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 courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for various Civil Service positions under the United States Government, and also engaged in the sale as aforesaid of other courses of study and instruction in other lines, all of which are pursued by correspondence, and such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, 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 its said courses of study and instruction with such other individuals, firms and corporations.

PAR. 4. Respondent in advertising for prospective students to pursue its said courses of study and instruction, has made use of advertisements inserted in the classified columns, usually in the "help wanted" parts thereof, of newspapers circulated in and among the various States of the United States to members of the public. Such advertisements did not give the name of respondent company or indicate that they were the advertisements of a school. They usually

Findings

19 F. T. C.

gave a box number for the reply in care of the newspapers in which the advertisement appeared or gave in addition merely the name of respondent's salesman. Said advertisements had the tendency and capacity to and actually did create the belief among readers thereof that they were the advertisements of the Government of the United States or of a representative thereof, or of some governmental agency or of some agency of official governmental connections, and also that Government positions were open and available and that men and women were wanted to fill them when such were not the facts. Examples of such advertisements inserted in newspapers as aforesaid are the following:

Railway Postal Clerks.—Men Age 18 to 35, \$1,900 year to start. For free information covering qualifications necessary to try the next examination write Field Advisor Box CS-26.

Men wanted.—Age 21 to 45 wishing to qualify for U. S. Customs and Immigration Inspectors. Personal interview by writing Mr. Myer, Box CS-28 care paper. Give age, address.

Steady Work.—Railway Postal Clerks. \$1,900 a year to start. Open only to men 18 to 35. Must be U. S. Citizens. Write for free information concerning training for next examination. Box CS-29, care paper.

Wanted Men.—Physically fit wishing to enter Government Work. This district—Washington, D. C. Age 18 to 45. Personal interview by writing Mr. Ford, Box CS-27, Journal-Review.

Clerks.—Government Work.—Men, women, age 18 to 50. Salary \$1,260 to \$3,400. Common education sufficient. Full particulars next examination for positions this district and Washington, D. C. Give age, address, Box CS-23.

Wanted Men.—Age 18 to 45 to prepare for Government Work. This district Washington, D. C. Qualification interview granted by writing Advisor Mr. Wright, Box CS-30, this paper. Give address.

Men.—18 to 45 wishing to enter Government work as Railway Mail Clerks, Custom-Immigration Inspectors. Personal interview by writing Mr. Ford, Box CS-31 this paper.

Men.—Physically fit, wishing to enter Government work. Not over 45 years of age. Common education sufficient. For full particulars write advisor Box CS-24, giving age, address.

Men.—Physically fit, not over 45 years of age wishing to enter Government work write Mr. W. L. Carlisle, Box 401, care of The Spirit, giving age, and address. You will be given qualification interview covering the next Civil Service examination for this district.

PAR. 5. The corporate name of respondent, "Civil Service Training Bureau, Inc.," has the tendency and capacity to create the belief that it represents or has official connection with the United States Civil Service Commission or that it is a bureau or agency of the United States Government, and said corporate name has actually occasioned such belief among prospective students of respondent company and others who have had occasion to come in contact with respondent or its representatives. In many instances the abbrevi-

ation "Inc." has been omitted from the corporate name by respondent from its letterheads, circulars and other literature. Even when said abbreviation "Inc." is included in the name, the effect of the whole is still misleading through failure of those who see the name to notice said abbreviated word or to appreciate the fact that it may denote a private institution. The term "Civil Service" is the name applied to groups of employees in Government employment, in large part those under the Government of the United States. The Civil Service Commission is an agency of the United States Government having supervision over the qualifying and appointment of persons for and to the Civil Service.

The word "Bureau" is a term frequently officially applied to governmental agencies and usually applied by members of the public in referring to governmental bodies. The use of the term "Civil Service" in the corporate name of respondent is misleading in the respect as hereinbefore stated as is also the word "Bureau." The misleading effect of respondent's said advertisements and its corporate name is heightened by the use by respondent of the terms "Advisors" "District Advisors", "Civil Service District Advisors", "Field Advisors" and "Registrars" to designate its salesmen and representatives and also by the use of the term "Central States Office" in referring to its place of business in Cleveland, Ohio. Said terms are and have been used in respondent's literature or in its advertisements or both. The false impressions created as previously set forth have caused persons to answer respondent's advertisements, to arrange for and have interviews with respondent's representatives in regard thereto, to pay money to such representatives and to sign contracts to pay additional sums because of such mistaken beliefs and before they were informed or discovered that respondent company is a private institution and is engaged in conducting a private correspondence school without any connection whatever with the Civil Service Commission or the United States Government.

Printed statements used by respondent formerly on the back of its receipts and more recently in the body of its contract forms to the effect that it is not connected with the United States Government are often not seen or read by those who pay money to respondent's representatives and sign its contracts, or the meaning thereof is not appreciated at the time or is made confusing by the misleading impressions created as hereinbefore set out. Such misleading impressions have been taken advantage of by respondent's representatives in many instances by silence in respect thereto and failure to inform prospective students that their beliefs are unfounded and also by actual misrepresentations coinciding with such mistaken beliefs inspired and arrived at as aforesaid.

PAR. 6. Respondent at one time had printed for the purpose of distribution to its salesmen and through them to its prospective students, a large number of booklets which contained many false and misleading statements in regard to Civil Service positions, their availability, number and duration, examinations for the same and respondent's ability to help its students get positions. Among such statements are the following:

Forty to Fifty Thousand new appointments made in Government Work each year.

We can help you get one of these well-paying lifetime positions.

In the United States the Civil Service Commission holds many different kinds of examinations annually.

At present there are nearly 700,000 Civil Service employees. For several years past, the number of new men appointed have averaged from 40,000 to 50,000 each year. Uncle Sam is constantly finding new positions for men and needs men to fill them.

About one hundred copies of said booklet were distributed to respondent's salesmen. Further distribution was discontinued when it was found that some of the statements therein contained were incorrect. However, in a number of instances salesmen of respondent company have made the same or similar representations as those quoted above as well as other misrepresentations as to Government appointments being available, the time and certainty of examinations, number of appointments to be made, and the like.

At the time said booklets were distributed there were not 40,000 to 50,000 Civil Service appointments made per year and at said time there were less than 500,000 Civil Service employees. Furthermore, at said time very few Civil Service examinations were being held, few appointments were being made and such as were made were largely by transfer, reinstatement or from registers of eligibles on file. There was little if any chance during such time for respondent's students to take a Civil Service examination, or, if taken and passed, to secure an appointment in the lines for which respondent offered training. Moreover, Civil Service jobs are not always or necessarily of lifetime duration. There is no such examination in the Civil Service as Internal Revenue-General Clerical or for Internal Revenue Clerk, or such a thing as a General Clerical examination, for which respondent offered instruction. No student of respondent company had received any Civil Service appointment at the time of the hearings conducted in this case, and no student who testified had had opportunity to take an examination for which he had studied. Respondent has no way of assisting its students in getting government positions other than by its training for examinations.

PAR. 7. Respondent used at one time a form of contract described as a "guarantee" contract and headed with the word "guarantee" in large and conspicuous letters. Said contract, used in connection with the misleading practices as herein set out, was calculated to and did actually mislead prospective students to believe that thereby they were guaranteed a job when in fact it was merely a refund agreement and then such refund was only available in case an examination was held and the student failed to pass. Since few, if any, examinations were being held in the lines in which respondent gave instruction, the guarantee in effect meant nothing at all.

PAR. 8. The representations of respondent as aforesaid had the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent was a representative of or connected with the United States Government; that positions were available and assured, and were offered to those who applied or who qualified; that examinations were being held at frequent intervals; that numerous appointments were being made in the Civil Service and that such positions were of lifetime duration; that those who signed respondent's contracts were guaranteed jobs; that respondent could assist in getting Government jobs for its students; and that there were positions in the Government of the kind and description for which respondent offered training; when in truth and in fact such were not the facts.

Said representations of respondent have had, and as to such as are yet continued, do now have the tendency and capacity to induce members of the public to answer respondent's advertisements, to sign its contracts, to pay money down and to contract to pay additional sums, and to pursue respondent's courses of instruction 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 correspondence courses in similar lines as well as in other lines of study.

PAR. 9. There are among the competitors of respondent in the sale of its said courses of study and instruction, those who in no wise misrepresent their identity or their relationship or lack of relationship with the Government, or who make misrepresentations as to the certainty or availability of jobs or examinations for same or who otherwise misrepresent their courses, the possibilities of employment, or other matters connected therewith, 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.

Order

19 F. T. C.

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, briefs filed herein and oral argument by counsel for the Commission and for 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, Civil Service Training Bureau, 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 said respondent's courses of study and instruction intended for preparing students for Civil Service examinations held by the Government of the United States, cease and desist from the following practices, to wit:

1. The use of the term "Civil Service" and the word "Bureau", or either of them, in the name under which said business is conducted, as aforesaid, or of any other word or expression therein which implies or suggests any connection with the Civil Service Commission or the United States Government, or the use of any such representation made in any other manner.

2. Designating any course offered by any term other than by such a term as may correspond to some classification used by the United States Civil Service Commission at the time such course is offered and for which examinations are held by said Commission.

3. Representing that respondent can assist its students in getting Government positions other than by assisting them in preparing for examinations.

4. Representing the number of Civil Service employees, the number of appointments made or to be made, the time, number or certainty of Civil Service examinations, or the period of duration of Civil Service jobs other than as such representations may represent the actual facts as they exist at the time such representations are made.

168

Order

5. The use of any advertisement which by its wording or by the heading under which it is placed, or otherwise, represents or implies that Government jobs are offered or are to be had or that persons are wanted to fill such jobs or that the advertisement is that of the United States Government or of a representative or agent thereof.

6. The use of any contract form which represents or implies that a government job is guaranteed.

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

19 F. T. C.

IN THE MATTER OF

NORWOOD PHARMACEUTICAL COMPANY, INC.

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

Docket 2154. Complaint, Jan. 16, 1934—Order, July 24, 1934.

Consent order requiring respondent, its agents, etc., to cease and desist from representing in advertisements or otherwise, in offering and selling its "Dr. Tripp's Tonic Prescription" in interstate commerce and the District of Columbia, that said preparation is—

- (a) A general health restorative, or cure, remedy or competent and adequate treatment for chronic diseases and ailments, or impure blood, skin troubles, constipation, neuralgia, rheumatism, and various other ailments as specified in said order;
- (b) The prescription of Dr. Tripp and Dr. John Tripp; and from making other claims or representations of substantially the same or similar import.

Mr. Robt. N. McMullen for the Commission.

Mr. George P. Latchford, Jr., of Chicago, Ill., for respondent.

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 Norwood Pharmaceutical Company, 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. That said respondent, Norwood Pharmaceutical Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and has its office and principal place of business in the city of Chicago, State of Illinois.

PAR. 2. That said respondent is now and has been engaged for more than three years last past in the business of compounding a medicinal preparation known and described as "Dr. Tripp's Tonic Prescription" and in the sale and distribution thereof in interstate commerce. That respondent in the course and conduct of its said business causes its said product to be transported in interstate commerce from its said place of business in Illinois to, into, and through States of the United States other than Illinois to persons, firms, and

corporations to whom or to which it is or has been sold. That respondent usually sells its said product to jobbers and to wholesale and retail druggists for ultimate resale to members of the public.

PAR. 3. That 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 medicinal preparations of similar kind and also of those designed, intended and used for the treatment of the various diseases and bodily ailments for which respondent's said preparation has been advertised as a treatment as hereinafter set out, 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 the origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said preparation with such other individuals, firms, and corporations. Said competing products are sold in most instances to wholesale and retail druggists for ultimate resale to members of the public.

PAR. 4. Respondent, in advertising its said preparation, "Dr. Tripp's Tonic Prescription" has made use of advertisements inserted in magazines circulated to the purchasing public in various States of the United States in which it is represented or implied that said preparation is a general health restorative; that it is a cure or remedy for or is a competent and adequate treatment for chronic diseases and ailments; that it is a cure, remedy or competent and adequate treatment for impure blood; that it is a cure, remedy or competent and adequate treatment for skin troubles, constipation, neuralgia, rheumatism, nervous debility, kidney disorders, bladder disorders, liver disorders, weakened and run down condition, sallow complexion, dizziness, biliousness, and general sluggishness. Respondent further has represented in such advertisements and has represented and now represents on its labels and other literature that said preparation as now formulated and sold is the prescription of Dr. Tripp or Dr. John Tripp.

Examples of statements in magazine advertising used by respondent containing representations as above stated are the following:

MAKE HEALTH A HABIT

Thousands have learned a simple easy way to accomplish this much desired result. When their system gets sluggish, rundown, or some distressing symptom, bodily ache or pain appears they merely go to their nearest

Complaint

19 F. T. C.

drug store and get a bottle of Dr. Tripp's famous Tonic Prescription.

Dr. Tripp's Tonic Prescription is unexcelled in chronic disturbances due to blood impurities to which 9 out of 10 ailments are directly or indirectly traceable. If you suffer from skin troubles, constipation, neuralgia, rheumatism in its various forms, nervous debility, kidney, bladder, or liver disorders, weakened, run down conditions, sallow complexion, dizziness, biliousness, general sluggishness, etc., learn at once what this splendid prescription can do for you.

Dr. John Tripp, former U. S. Army surgeon, developed this amazingly effective vegetable, mineral and alterative compound during his army service and used it with remarkable success for many years in relieving various chronic ailments.

On its packages in which said preparation is displayed and sold to the consuming public and elsewhere where said preparation is described or named by respondent the following designation is used:

Dr. Tripp's Tonic Prescription

PAR. 5. That in truth and in fact respondent's said medicine is not a general health restorative and is not a cure, remedy, or treatment for all the various causes and bodily conditions which produce ill health; that it is not a cure, remedy or treatment for chronic diseases or ailments; that it is not a cure, remedy or competent and adequate treatment for blood diseases or impurities in the blood, skin troubles, constipation, neuralgia, rheumatism, nervous debility, kidney disorders, bladder disorders, liver disorders, weakened or run-down condition, sallow complexion, dizziness, biliousness, or general sluggishness. That all of the above statements, representations, and implications are either wholly beyond the therapeutic effects of said medicine or are greatly exaggerated or grossly inaccurate. That said preparation has some value as a tonic, stomachic, alterative, and mild laxative. That it may be useful in the treatment of simple neuralgia, flatulence, occasional constipation and accompanying biliousness, and as an aid in reducing fever. Any statement of the therapeutic effects beyond such values are unwarranted or greatly exaggerated.

PAR. 6. That the representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said medicine is a cure, remedy or competent and adequate treatment for the various diseases and bodily ailments as above set forth when in truth and in fact such are not the facts or only to a limited extent.

That said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy 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 medicine of the same or similar kind and of those adapted and used for the treatment of the various diseases and bodily ailments for which respondent represents its said medicine as a cure, remedy, or treatment as above set out.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Now on this day comes on for consideration the above matter.

And it appearing to the Commission that the respondent has asked leave to withdraw its answer herein and has proffered a substitute answer in which it states that it refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon it an order to cease and desist from the violation of law alleged in the complaint.

And the Commission having considered respondent's application to withdraw its former answer and having considered the substitute answer, and that such consent answer under the published Rules of Practice and Procedure of the Commission is an admission of all the allegations of the complaint; and the Commission being fully advised in the premises—

It is hereby ordered, That the respondent be and hereby is permitted to withdraw its original answer and that the substitute answer be accepted, filed, and considered as respondent's answer in this matter.

And it is further ordered, That respondent, Norwood Pharmaceutical Company, Inc., its agents, employees, and representatives, forthwith cease and desist from representing, directly or indirectly, in advertisements or otherwise, in offering for sale and selling its product—Dr. Tripp's Tonic Prescription—in interstate commerce and in the District of Columbia :

- (1) That said preparation is a general health restorative;
- (2) That it is a cure or remedy or is a competent and adequate treatment for chronic diseases and ailments;

Order

19 F. T. C.

(3) That it is a cure, remedy or competent and adequate treatment for impure blood;

(4) That it is a cure, remedy, or competent and adequate treatment for skin troubles, constipation, neuralgia, rheumatism, nervous debility, kidney disorders, bladder disorders, liver disorders, weakened and run down condition, sallow complexion, dizziness, biliousness, or general sluggishness;

(5) That said preparation is the prescription of Dr. Tripp or Dr. John Tripp;

(6) Any other claims or representations of substantially the same or similar import.

And it is further ordered, That the said respondent, Norwood Pharmaceutical Company, Inc., shall within 60 days from 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.

Complaint

IN THE MATTER OF
EUGENE MUNKCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2198. Complaint, June 16, 1934—Order, July 24, 1934*

Consent order requiring respondent individual, his agents, etc., in connection with the sale, offer or distribution in interstate commerce and the District of Columbia of his massage cream variously labeled, designated, and described by him as "Reta-Rea Cream", "Joan Hall Cream", and "Lanola Cream" and otherwise (or in connection with the sale or offer of any similar preparation for external application), to cease and desist from representing that such preparation has fat or weight reducing qualities, or any other function for reducing other than serving as a lubricant to facilitate massage.

Mr. Harry D. Michael 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 Eugene Munk has been and 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Eugene Munk, is now and has been for more than two years last past engaged in the business of compounding various toilet, cosmetic, and other preparations, and of selling the same in interstate commerce to members of the purchasing public located in various States of the United States, with his office and principal place of business in the City of New York in the State of New York. Respondent sells the preparation hereinafter described by direct sale by mail to members of the purchasing public located in various States of the United States, and respondent causes his said preparation to be transported in interstate commerce from his said place of business in New York to, into and through States of the United States other than New York, to the buyers thereof to whom it is or has been sold. That said preparation sold by respondent as aforesaid is a massage cream which he has at various times labeled, designated, and described as "Reta-Rea Cream",

Complaint

19 F. T. C.

"Joan Hall Cream", and "Lanola Cream", and in the sale of which under each of said names, respectively, he used the trade name of "Reta-Rea Company" or simply "Reta-Rea", "Joan Hall", and "Lanola Company." That prior to the use of said names for said cream and said trade names, respondent had used other names for the cream and other trade names in the conduct of the business therein.

PAR. 2. That respondent in advertising his said massage cream represents by statements and by implication that said cream has qualities within itself of causing reduction of excess fat in the human body. Among such representations used by respondent and inserted in magazines and other publications circulated to the purchasing public in various States of the United States are the following:

REMOVE FAT

From any part you wish reduced. No equipment necessary—satisfaction or money back. A safe and sure way. Reta-Rea Cream and Method will quickly and safely reduce excess fat from double chin, arms, bust, hips, legs and other parts of body. Over 35,000 satisfied users. Large jar only \$1. Complete treatment with instructions—Send \$1 or mail coupon—Reta-Rea, Dept. B, 1851 Washington Avenue, New York, N. Y. * * *

REMOVE FAT

From any part you wish reduced. No equipment necessary—Your money back if you are not satisfied. A sure safe way. Joan Hall Cream and Method quickly and safely reduces double chins, arms, bust, hips, legs and other parts of body. Large jar now only 60¢. Nothing more to buy. Two jars for \$1. Joan Hall, Dept. M-1, 1851 Washington Avenue, New York City. * * *

Advertisements of the same or substantially the same wording as those given above have been used by respondent in regard to Lanola Cream except that the product is described as "Lanola Cream" and the seller is named as "Lanola Company". The address given in such advertisements is the same as that in the above-quoted advertisements. Said address is that of the respondent herein where he also conducts a business in compounding and selling various toilet and cosmetic products as well as other preparations under the trade name of Beaufix Laboratories.

Said advertisements, in addition to the wording quoted and referred to above, contain a cut representing a fat woman and a slender woman standing on the opposite ends of a balance or scale. The import of said advertisements is that the cream itself has reducing properties and that it is an essential part of the method

referred to. Accompanying the preparation are suggestions as to diet and directions to keep the bowels active, to take warm baths, to massage the parts where the cream is applied and to wrap said parts in warm wool cloth and leave over night. Such measures suggested and directed would tend to produce a reduction in fat or in flesh and might do so without regard to the cream. The only function of the cream in the method given is to act as a lubricant to facilitate the massage. It has no reducing function or effect in itself.

PAR. 3. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the compounding, sale, and distribution in interstate commerce of massage creams of the same general kind as that compounded and sold by respondent as aforesaid, and of various preparations and appliances designed for and used for the purpose of effecting weight reduction which either have reducing functions in themselves or are recognized adjuncts or adjuvants to a reducing regimen, 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 his said cream with such other individuals, firms, and corporations.

PAR. 4. That the representations of respondent, as aforesaid, have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said preparation will of itself reduce excess fat or that it has the effect of causing reduction in weight when in truth and in fact such is not the case. That said representations of respondent have the tendency and capacity to induce members of the public to buy and use his said preparation 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 massage creams of the same general kind and of preparations and appliances intended and used for reducing excess fat and of those used as adjuncts or adjuvants to other reducing procedure.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 16th day of June 1934 issued its complaint against Eugene Munk, respondent herein, and caused the same to be served upon him as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Thereafter, said respondent filed herein an answer in writing 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.

Therefore, 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 respondent, trading under his own name or under any trade name, his agents, employees, or successors, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of his massage cream labeled, designated, and described by him at various times as "Reta-Rea Cream", "Joan Hall Cream", and "Lanola Cream", as well as other names, or of any cream of the same or essentially the same composition under any other name or names, or of any similar preparation for external application, cease and desist from representing by statements or by any other means which represent or imply that such preparation has qualities or properties within itself that will cause reduction of fat or weight in the human body, or that such preparation has any function or use in any reducing method other than serving as a lubricant to facilitate massage.

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 herein above set forth.

Complaint

IN THE MATTER OF
OLD HICKORY MILLS ET AL.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1607. Complaint, Sept. 6, 1929¹—Order, Aug. 6, 1934*

Consent order requiring respondent Old Hickory Mills, its officers, etc., in connection with the sale of flour in commerce among the several States, to cease and desist from carrying on such business under the name "Old Hickory Mills" or under any other name including the word "Mills" or any other word or words of like import, and from representing through advertisements, circulars, etc., or in any other manner designed to promote or affect interstate commerce, that it is a manufacturer of flour or that the flour sold by it comes direct from manufacturer to purchaser, unless and until it 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 it under such title or name, or by or through any such representations; 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 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."

Mr. Edward L. Smith and Mr. John W. Hilldrop for the Commission.

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

COMPLAINT¹

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 Old Hickory Mills, a corporation, J. Frank Foster, individually and as president, James Willis, individually and as vice president, R. W. Condon, individually and as vice president, and D. L. Anderson, individually and as secretary-treasurer, 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, Old Hickory Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The respondents, J. Frank Foster, James

¹ Amended.

Willis, R. W. Condon, and D. L. Anderson are respectively, president, vice presidents, and secretary-treasurer of said corporation. Respondent corporation has its place of business at 410 Twenty-third Avenue, North, in the city of Nashville, State of Tennessee, which is also the location of the office and plant of the Mero Mills which is engaged in the business of blending and mixing flours and selling the same to the public in both self-rising and plain form. Respondents, J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson, manage, control, and direct the business and affairs of respondent Old Hickory Mills.

PAR. 2. The respondent corporation, Old Hickory Mills, is engaged in the business of selling flour, principally to retail grocers located throughout the southeastern States of the United States, which flour it purchases from the Mero Mills, which packs the same on orders received by it from the respondent corporation. The business of respondent amounts to approximately 20,000 barrels of flour per year, the orders for which are solicited principally through the mail. Respondent corporation also conducts and operates its business under the trade names of Lion Milling Company and Maple Leaf Milling Company at the same address; namely, 410 Twenty-third Avenue, North, Nashville, Tenn. On the letterheads used in the business done by respondent corporation under the trade names aforesaid, separate post office addresses are given; to wit, Lion Milling Company, P. O. Box 118, and Maple Leaf Milling Company, P. O. Box 234, Nashville, Tenn.

PAR. 3. Respondent corporation solicits orders for flour purchased, prepared, and sold to it by the Mero Mills, as above described, in States other than the State of Tennessee, and contracts to sell and deliver and does sell and cause to be transported to purchasers outside the State of Tennessee, said flour. Respondent corporation is in competition with individuals, partnerships and corporations likewise engaged in the business of selling flour in interstate commerce.

PAR. 4. Respondent corporation, in the conduct of its business as aforesaid, sells the flour purchased by it as above described under from two to six brands under each of the three names; namely, Old Hickory Mills, Lion Milling Company, and Maple Leaf Milling Company. The letterheads used in its business correspondence are as follows:

OLD HICKORY MILLS
Manufacturers of
Pure Soft Wheat Flour

187

Complaint

MAPLE LEAF MILLING COMPANY

Box 234

Nashville, Tennessee

LION MILLING COMPANY

Box 118

Nashville, Tennessee

The flour packed for respondent and sold by it as aforesaid is delivered in cotton or other sacks on which respondent causes to be stamped in conspicuous letters the name or symbols of the particular brand and also the words, "From Old Hickory Mills, Nashville, Tennessee", or "From Maple Leaf Milling Company, Nashville, Tennessee", or "From Lion Milling Company, Nashville, Tennessee", and such words as: "Best Plain Patented" or "Self-Rising Flour."

In the course of its said business respondent corporation sends out circulars and other literature which contain other representations in words or symbols tending to lead customers and prospective purchasers of the flour which it sells to believe that it manufactures said flour, whereas respondent corporation owns no plant or machinery for the grinding of wheat into flour.

PAR. 5. The use by respondent corporation of the name, Old Hickory Mills and the trade names Lion Milling Company and Maple Leaf Milling Company, and the representations in its correspondence and otherwise, as aforesaid, have the capacity and tendency to lead dealers and prospective purchasers of flour to believe that in purchasing its products they are buying flour direct from a miller or manufacturer of flour—that is, one that makes the flour it sells by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour, and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of its flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce, and with sellers of flour likewise engaged in interstate commerce who do not manufacture the flour they sell but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business.

Wherefore, the said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition

Order

19 F. T. C.

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

Old Hickory Mills, a corporation, one of the respondents in this proceeding, by its attorney, Thomas H. Malone, Esq., having filed with this Commission its motion that it be permitted to withdraw its answer to the amended complaint herein and be permitted to waive hearing on the charges set forth in the complaint herein and not contest the proceedings, and the said respondent, Old Hickory Mills, in and by its said motion relying on paragraph 2 of Rule III of the Commission's Rules of Practice, having consented that as therein provided, the Commission may make, enter and serve upon said respondent, Old Hickory Mills, an order to cease and desist from the methods of competition alleged in the said complaint; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the said motion be and the same is hereby granted and that the said respondent, Old Hickory Mills be and it is hereby permitted to withdraw its answer to the amended complaint herein, and that it be and is hereby permitted to waive hearing on the charges set forth in the said complaint;

And it is hereby further ordered, That the said respondent, Old Hickory Mills, its officers, agents, representatives, and employees forthwith cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under the name Old Hickory Mills or under any other name which includes the word "mills" or any other word or words of like import, and from making representations through advertisements, circulars, correspondence, stationery, or in any other manner whatsoever designed to promote or otherwise affect interstate commerce, that it is a manufacturer of flour or that the flour sold by it comes direct from manufacturer to purchaser, unless and until said respondent, Old Hickory Mills, using such word or 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 it under such title or name, or by or through any such representations; unless and until respondent shall insert and use also the words "Not Grinders of Wheat" in immediate conjunction with

187

Order

its title, corporate name, trade name, or other designation 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.

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

ORDER OF DISMISSAL AS TO RESPONDENT INDIVIDUALS

This Commission having been informed that J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson made respondents in this proceeding as individuals and as officers of the respondent, Old Hickory Mills, a corporation, are no longer connected with the said respondent, Old Hickory Mills, and the Commission this day having entered, issued, and served upon said respondent, Old Hickory Mills, an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, For the reasons hereinabove mentioned, that the complaint in this proceeding as to the aforesaid J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson be and the same is hereby dismissed.

Complaint

19 F. T. C.

IN THE MATTER OF
SCHULTZ & HIRSCH COMPANY

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

Docket 2105. Complaint, June 9, 1933—Order, Aug. 6, 1934

Consent order requiring respondent, its officers, etc., in connection with sale or distribution of mattresses or similar articles in interstate commerce or the District of Columbia, or to promote the purchase and use by dealers and the consuming public thereof, to cease and desist from—

“Directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public”;

Provided that nothing above shall be construed as authorizing or permitting respondent, officers, etc., “to coerce, induce, or cause any dealers or merchants to enhance their prices, or to fix or charge uniform or enhanced resale prices in the marketing of aforesaid articles to the consuming public.”

Mr. Henry Miller for the Commission.

Alzheimer, Mayer, Woods & Smith, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, the Federal Trade Commission charges that Schultz & Hirsch Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Schultz & Hirsch Company, is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State. It is and for many years last past has been engaged in the business of manufacturing mattresses, of selling

and distributing such mattresses in commerce among the various States of the United States to dealers and users, including retail department stores, furniture stores, and other purchasers, and of promoting the purchase and use of such mattresses by the consuming public throughout the United States. Respondent causes said mattresses when sold to be shipped and transported from its factory and place of business in the State of Illinois, through and into other States of the United States to the respective purchasers thereof; and in its sale and distribution of such mattresses, respondent has been at all times herein mentioned and still is engaged in interstate commerce.

There are and have been numerous persons, partnerships, and other corporations, manufacturers, or vendors of mattresses, engaged in the business of selling and distributing their mattresses in commerce in, between and among various States of the United States to the purchasing public, to wit: department stores, furniture stores, and other dealers and users, in the respective States and sections of the United States in which respondent does business. At all times herein mentioned respondent has been and is carrying on and conducting its aforesaid business, and has been and is selling and distributing its mattresses, in direct, active competition with said persons, partnerships, and other corporations, and with manufacturers and vendors of mattresses generally.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and during a period of more than three years last past, respondent has followed and continues to follow the practice of selling and distributing mattresses to which it has affixed labels conspicuously displaying certain purported resale or retail prices of such mattresses, which prices are not the real, actual, usual or regular retail or resale prices or the prices at which such mattresses are or have been sold at retail or otherwise, nor the prices at which such mattresses are or have been intended by respondent or its vendees to be resold to the purchasing or consuming public; but, on the contrary, are and have been false, fictitious, and inflated prices, greatly in excess of the true value, or of the usual, regular or customary retail or resale prices of said mattresses. The said price marks remain displayed upon said mattresses throughout the channels of trade and distribution to the consuming public and they are and have been placed upon such mattresses by the respondent with its knowledge of their false and fictitious character, and with the intent and purpose of misleading and deceiving the purchasing and consuming public as to the true value and the regular, usual or customary selling prices of said mattresses. Among said false, ficti-

Complaint

19 F. T. C.

tious, and inflated price marks placed upon said mattresses by respondent is the price mark of \$39.50 sewed and displayed upon mattresses sold by respondent to its dealer-purchasers at prices ranging from \$10.50 to \$13 each and resold to the consuming public in the regular course of business by dealers at the retail or resale price of \$19.75 each.

PAR. 3. The use by respondent of said practice of causing its mattresses to be labeled with and marketed under said false, fictitious and inflated price marks, as above described, was calculated to mislead and deceive, and has and had the capacity, tendency, and effect of (1) misleading and deceiving the purchasing and consuming public as to the quality, value, grade and price of such mattresses; and (2) of aiding, enabling, or causing dealers to sell such mattresses to the consuming public—

(a) at so-called half prices purporting to constitute 50 percent reductions in such dealers' prices but which reductions are in fact false and fictitious; or

(b) upon false or misleading representations to the effect that such dealers' prices to the consuming public are reduced prices, that their prices have been reduced from the prices set forth in such price labels, that such purported reduction by dealers is a genuine, bona fide reduction in price by which purchasers are saved sums of money equivalent to the amount of such reduction, that said price marks which respondent caused to be affixed to said mattresses as above described represent the current, regular or usual retail prices or such dealers' regular or usual retail price of said mattresses and for mattresses of their grade and quality, and that such mattresses are higher priced mattresses, being offered for sale or sold at greatly reduced prices or lowered prices.

To promote the sale and distribution of said mattresses under said false, fictitious, or inflated price marks, respondent has aided and assisted dealers in procuring certain advertising matrices and forms of advertisements setting forth said false and fictitious price marks and reductions in price, which advertising matter, pursuant to respondent's intention and purpose, is and has been used by such dealers to advertise and promote the resale of such mattresses to the consuming public upon said false or misleading representations as to prices, reduction in prices, quality, value, grade and saving to consumer.

PAR. 4. The use by respondent of said false, fictitious, or inflated price marks, and of the misleading and deceptive representations, acts and practices, hereinabove set forth, is unfair and tends to, and does (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 or a detriment to the freedom of fair and legitimate competition in the industry and trade engaged in the manufacture and sale of mattresses and allied products; and constitutes unfair methods of competition in commerce in violation of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under 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 respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to the provisions of paragraph (2) of Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That, in the course or conduct of the business in interstate commerce or in the District of Columbia of selling or distributing mattresses or similar articles of bedding, or of promoting the purchase and use by dealers and the consuming public of mattresses or similar articles of bedding, respondent Schultz & Hirsch Company, its officers, directors, agents, servants, and employees cease and desist:

From directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be

Order

19 F. T. C.

marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public.

It is further ordered, That nothing herein contained shall be construed as authorizing, requiring, or permitting respondent or its officers, directors, agents, servants, or employees to coerce, induce, or cause any dealers or merchants to enhance their prices or to fix, maintain or charge uniform or enhanced resale prices in the marketing of the above-mentioned articles to the purchasing or consuming public.

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

Complaint

IN THE MATTER OF

NACHMAN SPRING-FILLED CORPORATION

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

Docket 2106. Complaint, June 9, 1933—Order, Aug. 6, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or distribution of spring units or spring constructions for use in mattresses and similar articles, or of supplying and distributing specifications for the manufacture of such articles or of selling and otherwise supplying to mattress manufacturers labels to be affixed to or used in connection with the sale of such various articles, or of promoting the purchase and use by dealers and consuming public of such springs and mattresses, to cease and desist from—

“Directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public”;

Provided that nothing above shall be construed as authorizing or permitting respondent, officers, etc., to “coerce, induce or cause any dealers or merchants to enhance their prices, or to fix or charge uniform or enhanced resale prices in the marketing” of aforesaid articles to the consuming public.

Mr. Henry Miller for the Commission.

Alzheimer, Mayer, Woods & Smith, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled “An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes”, the Federal Trade Commission charges that Nachman Spring-Filled Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate

Complaint

19 F. T. C.

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

PARAGRAPH 1. Respondent, Nachman Spring-Filled Corporation, is a body corporate organized and existing under the laws of the State of Illinois, having its principal and executive offices and place of business in the city of Chicago in said State. It is and for many years last past has been engaged in the business (1) of manufacturing, selling, and distributing the mattress manufacturers and other manufacturers throughout the United States, spring units or spring constructions, commonly known as Nachman springs, for use in and as part of inner-spring mattresses and box-spring mattresses or upholstered box springs manufactured by such purchasers; (2) of selling and otherwise supplying and distributing to said mattress manufacturers throughout the United States specifications for the manufacture of mattresses containing said Nachman springs; (3) of selling and otherwise supplying to mattress manufacturers certain labels to be affixed by such manufacturers upon mattresses containing said Nachman springs and under which labels such mattresses are and have been marketed to the trade and consuming public throughout the United States; and (4) of promoting the purchase and use by the dealers and the consuming public throughout the United States of mattresses containing said Nachman springs and mattresses manufactured pursuant to said specifications. In the sale and distribution of its said spring units or spring constructions and other products, respondent has caused and continues to cause the same when sold to be shipped and transported from its factories, warehouses or other places of business in certain States into and through various States other than the States in which such respective shipments originated. Respondent carries on its said business in interstate commerce and throughout the course of such business has continuously engaged in such interstate commerce.

PAR. 2. There are and, at all times herein covered, have been sundry other corporations, persons, partnerships, and firms engaged in the business of selling and distributing, in commerce in, between, and among various States of the United States, certain products manufactured or purchased by them, to wit, spring units or spring constructions for inner-spring and box-spring mattresses, mattresses and allied products, which products are competitive to respondent's aforesaid products and the said mattresses manufactured under respondent's specifications or containing respondent's spring units or spring constructions. Respondent has been and still is conducting its said business and offering for sale, selling and distributing its spring units or

spring constructions, and promoting the purchase and use by dealers and the consuming public of mattresses manufactured under respondent's specifications or containing its said springs, in direct, active competition with said other corporations, persons, firms and partnerships, and with competitors generally in all parts of the country.

PAR. 3. In the course and conduct of its said business and during the period of more than three years last past, respondent has engaged in and continues to engage in the practice of causing mattresses manufactured under respondent's aforesaid specifications and containing its spring units or spring constructions to be sold and distributed to dealers and the consuming public under labels affixed thereto and conspicuously displaying certain purported resale or retail prices of such mattresses and purporting to be genuine prices and the regular or usual retail or resale prices voluntarily fixed or followed by the respective dealers in such mattresses; whereas in truth and in fact—

(1) the said prices marked or labeled upon said mattresses are not the real, actual, or usual retail or resale prices nor the prices at which such mattresses are or have been sold at retail or otherwise, nor the prices at which such mattresses are or have been intended by dealers to be resold to the purchasing or consuming public, nor are such prices any real retail or resale prices voluntarily fixed or followed by the respective dealers;

(2) the said prices are and have been, false, fictitious or inflated prices, greatly in excess of the true value, or of the usual, regular, or customary retail or resale prices of said mattresses, and are not any real or genuine prices independently or voluntarily fixed or followed by the respective dealers.

The said price labels remain displayed upon the mattresses throughout the channels of trade and distribution to the consuming public; and they are and have been used upon such mattresses with the respondent's knowledge of their false and fictitious character and pursuant to an intention and purpose on the part of respondent to mislead and deceive the purchasing and consuming public as to the true value or as to the regular, usual or customary retail selling prices of said mattresses. Among said false, fictitious, and inflated prices marked upon said mattresses is the price of \$39.50 sewed and displayed upon so-called Nachman mattresses sold by various manufacturers thereof to dealers at prices ranging from \$10.50 to \$13 and resold by such dealers to the consuming public in the regular course of trade at the retail or resale price of \$19.75.

PAR. 4. Respondent's practice of causing said false, fictitious, and inflated price marks to be labeled upon said mattresses containing its springs as above described was calculated to mislead and deceive,

and has and had the capacity, tendency, and effect of (1) misleading and deceiving the purchasing and consuming public as to the value, grade, quality and price of such mattresses; and (2) of aiding, enabling or causing dealers to sell such mattresses to the consuming public (a) at so-called half prices purporting to constitute 50 percent reductions in such dealers' prices but which reductions are in fact false and fictitious; or (b) upon false or misleading representations to the effect that such dealers' prices to the consuming public are reduced prices, that their prices have been reduced from the prices set forth in such price labels, that such purported reduction by dealers is a genuine, bona fide reduction in price by which purchasers are saved sums of money equivalent to the amount of such reduction, that said price marks which respondent caused to be affixed to said mattresses as above described represent the current, regular, retail prices or such dealers' regular retail prices for said mattresses and for mattresses of their grade and quality, and that such mattresses are higher priced mattresses being offered for sale or sold at greatly reduced prices or lowered prices.

In promoting the sale and distribution of said mattresses under said false, fictitious, or inflated price marks respondent supplies to dealers certain advertising matrices and suggested forms of advertisements setting forth said false and fictitious price marks and reductions in price, which advertising matter, pursuant to respondent's intention and purpose, is and has been used by such dealers to advertise and promote the resale of such mattresses upon said false or misleading representations as to prices, reduction in prices, quality, value and saving to consumer.

PAR. 5. The use by respondent of said false, fictitious, or inflated price marks, and of the misleading and deceptive representations, acts and practices hereinabove set forth, is unfair and tends to, and does (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors and the manufacturers and vendors of mattresses which are competitive to the mattresses containing respondent's spring units or spring constructions, (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry and trade engaged in the manufacture and sale of mattresses and allied products, including spring units or spring constructions for inner-spring and box-spring mattresses; and constitutes unfair methods of competition in commerce in violation 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.

197

Order

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under 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 respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to the provisions of paragraph (2) of Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter and serve upon respondent, without evidence and without findings as to facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That, in the course or conduct of the business in interstate commerce or in the District of Columbia of selling or distributing spring units or spring constructions for use in or as part of mattresses and similar articles of bedding, of selling or otherwise supplying and distributing specifications for the manufacture thereof, of selling and otherwise supplying to mattress manufacturers and others labels to be affixed to or otherwise used in connection with the sale of mattresses and similar articles of bedding, or of promoting the purchase and use by dealers and the consuming public of said springs, mattresses and similar articles of bedding, respondent Nachman Spring-Filled Corporation, its officers, directors, agents, servants, and employees cease and desist:

From directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public.

Order

19 F. T. C.

It is further ordered, That nothing herein contained shall be construed as authorizing, requiring or permitting respondent or its officers, directors, agents, servants, or employees to coerce, induce, or cause any dealers or merchants to enhance their prices or to fix, maintain or charge uniform or enhanced resale prices in the marketing of the above-mentioned articles to the purchasing or consuming public.

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

Syllabus

IN THE MATTER OF

MIXER MEDICINE COMPANY, CHARLES M. MIXER,
PROPRIETOR

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

Docket 1914. Complaint, Feb. 19, 1931—Decision, Aug. 7, 1934

Where an individual engaged in the sale of cancer medicines and pastes, manufactured by, or prepared for, him; in describing the same in circulars, booklets and letters and on containers and labels of the bottles thereof, and through booklets sent to customers and prospective customers containing hundreds of purported testimonials from persons claiming to have been cured of cancer by the use of his said remedies, and depicting scores of gruesome pictures of persons who had been afflicted with said ailment—

- (a) Falsely represented that his said preparations had therapeutic value and constituted proper treatment and cure for all kinds of cancer and scrofula, and had restored to perfect health hundreds suffering from cancerous and scrofulous afflictions, facts being they had no therapeutic value or effect in such diseases and their use was dangerous to the lives and health of those taking the same in that they postponed the procurement of proper and efficacious treatment for said diseases, and said medicines had not restored to perfect health hundreds suffering therefrom or helped, aided, or relieved any person afflicted therewith, and the depictions referred to had the tendency and capacity to deceive those observing such depictions into the erroneous belief that those depicted therein had been cured of their afflictions, or could be cured thereof, through the medicines involved;
- (b) Included the prefix "Dr." or "Drs." with said individual's name on the labels of such medicines and displayed said prefixes together with his name in the reproductions of hundreds of testimonial letters, notwithstanding fact that said individual was neither a physician or surgeon, or chemist or pharmacist, but was the son of a doctor who founded and carried on the business involved for many years prior to his retirement and death; and
- (c) Falsely represented that he could adequately diagnose and properly prescribe for cancer and scrofula from a layman's answers to a list of questions which he propounded in questionnaires sent to patients writing him, who had or suspected the presence of cancer, and which he made use of as a basis for prescribing his cancer remedies, without physical examination of the patient, on the basis of the information therein supplied, which contained questions as to the physical condition of the patient, facts being said diseases could be correctly diagnosed only through a careful physical examination by a competent physician;

With tendency and capacity to mislead and deceive ultimate consumers of said preparation into the belief that such statements and representations were true, and induce the purchase of said medicines in such belief, and divert trade to him from competitors engaged in the sale of radium and X-ray apparatus for use in the treatment of said afflictions:

Complaint

19 F. T. C.

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. E. J. Hornibrook 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 Mixer Medicine Company and Charles W. Mixer, proprietor, hereinafter called respondents, have been and are using unfair methods of competition in interstate commerce.

PARAGRAPH 1. Respondents are now, and for several years last past have been engaged, with their principal office and place of business at Hastings, in the State of Michigan, in the manufacture or preparation, and sale in commerce among the various States of the United States of products described as remedies for use in the treatment of various diseases. In the course and conduct of such business, respondents have been and now are engaged in competition with individuals, partnerships, and corporations offering for sale or selling in like commerce, preparations or compounds or medicines for use in the treatment of the same or similar diseases.

PAR. 2. Respondents have offered for sale and sell in interstate commerce their products called Mixer's Cancer and Scrofula Syrup, Mixer's Cancer and Tumor Absorber, Mixer's Cancer Salve, Mixer's Scrofula Salve, Mixer's Cancer Paste, Mixer's Cancer Reducer, Mixer's Cancer Reducer Oil, Mixer's Catarrh Lotion, Mixer's Catarrh Wash, Mixer's Stomach Tonic, Mixer's Kidney Tonic, Mixer's Nerve Pills, Mixer's Goiter Paste, Mixer's Goiter Reducer, and other so-called Mixer Preparations by means of pamphlets, catalogues, leaflets, letters, circulars, and otherwise, which contain the following false and misleading representations:

Three-score years have passed since the origin of Mixer's Cancer and Scrofula Syrup, and upon the sixty-year-pages of history are written hundreds of grateful letters from those who have suffered beyond measure, and then been restored to perfect health. It can be safely said that the years grow brighter with achievements accomplished in the relief of suffering humanity by the use of the Mixer Remedies;

DISEASES FOR WHICH OUR TREATMENT IS ESPECIALLY INTENDED

Cancers, Tumors, Goiter, Abscesses, Ulcers, Varicose Ulcers, Gastric Ulcers, or Ulcerated Stomach, Catarrh of the Stomach, Scald Head or Milk Crust,

Erysipelas, or St. Anthony's Fire, Salt Rheum, Ring Worm or Tetter, Swollen Feet or Legs, Boils, Blotches, Pustules, Pimples, in fact a remedy for all Eruptive or Cutaneous Diseases. Rheumatism, Syphilis, Catarrh, Laryngitis, Bronchitis, Dyspepsia, Piles (bleeding or otherwise), Fistula and all diseases peculiar to the glandular or assimilative system;

This booklet is the supplement or overflow of Book No. 4, bearing even date herewith, and is filled with testimonial letters from people all over the United States, who have been restored to health after years of suffering from Tumors, Cancers, Ulcers, Fever Sores, Salt Rheum, Goiter, and other diseases of the blood, by the use of our remedies. * * * *The Mixer remedies are efficient and of great merit.* * * * Book No. 4, of which this supplement is a part, contains scores of halftone reproductions of Cancers, Tumors, Goiters and eruptions, with hundreds of testimonials, accompanied by affidavits of perfect cures;

If any person will read the hundreds of testimonials we have from people who have been cured by our remedies and as herein reproduced, and *then* be skeptical they could not be convinced "though one arose from the dead." Read them with an unblased mind and then pass judgment as to the great value of our treatment.

MIXER'S CANCER AND SCROFULA SYRUP

Alcohol 7½ Percent

FOR CANCER AND SCROFULOUS AFFECTIONS

Such as Erysipelas or St. Anthony's Fire, Tinea Capitis, Scald Head or Milk Crust, Salt Rheum, Ringworm or Tetter, Tumors, Ulcers, Boils, Pustules, Blotches and Pimples.

IT IS A SPLENDID TONIC

CATARRH

Laryngitis, Bronchitis, Dyspepsia, Piles, Fistula, and all Diseases peculiar to the Glandular or Assimilative System

DR. MIXER

Whereas, in truth and in fact, the products prepared or manufactured by respondents as aforesaid as remedies and/or cures for cancer, goiter, tumors, and other diseases, are not remedies and/or cannot cure the said diseases for which they are recommended by respondents and the use of the same cannot and will not restore to perfect health persons suffering from said diseases.

PAR. 3. Respondents in the literature and advertisements distributed by them in the course and conduct of their business in interstate commerce as aforesaid represent that respondent Charles W. Mixer is a physician or doctor of medicine when, in truth and in

fact, said Charles W. Mixer is not and never has been a physician or doctor of medicine, licensed to practice medicine and/or surgery in the State of Michigan or any other State or States of the United States.

PAR. 4. Respondents, in the course and conduct of their business carried on as aforesaid, issue and distribute in interstate commerce circulars or questionnaires to be filled out by prospective customers or purchasers of the various and sundry Mixer remedies in which circulars or questionnaires respondents assert or represent that from the answers made to the questions asked therein that they can diagnose the diseases, particularly cancer, from which the prospective customers or purchasers may be suffering and can correctly prescribe the treatment and medicine required by said customers or purchasers in order to effect a cure, when in truth and in fact said diseases, particularly cancer, cannot be so diagnosed correctly, and certain of them require a microscopic examination in order to obtain positive diagnoses.

PAR. 5. Respondents, in the course and conduct of their business carried on as aforesaid, issue and distribute in interstate commerce books or booklets or pamphlets containing numerous testimonials in which statements are made by persons giving or purporting to give said testimonials that the said persons making said statements were or had been suffering from cancer and that said persons had been cured or completely restored to health by the use of respondents' Cancer and Scrofula Syrup or other remedies of or treatments by respondents when in truth and in fact respondents were without knowledge as to the disease or diseases from which said persons were or had been actually suffering.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, in their advertising matter distributed in interstate commerce represent by half-tone reproductions of photographs and by testimonials that said half-tone reproductions of photographs and testimonials represent the terrible development of cancer, scrofula, ulcers, and kindred diseases in their varied form, when in truth and in fact respondents are without knowledge of the diseases from which said persons, or many of them so represented, are suffering so as to be able to state with definiteness and with certainty that the diseases from which said persons are or were suffering are cancer, scrofula, ulcers, or kindred diseases.

PAR. 7. The above and foregoing representations in statements of respondents by means of which they have offered for sale and sold or are selling their products as set forth in this complaint have had and have the capacity and tendency to mislead and deceive, and/or have misled and deceived the purchasing public into the belief that

the so-called Mixer remedies or preparations are remedies for or are cures of cancer, goiter, tumors, and other diseases and that the use of the same will restore to perfect health persons suffering from said diseases, and have tended to induce, and have induced, the purchase of respondents' so-called Mixer remedies or preparations in reliance upon such erroneous belief, and have tended to divert trade from and have diverted trade from and otherwise injured competitors of respondents.

PAR. 8. The above acts and things done by said respondents as aforesaid are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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 February, A. D. 1931, issued against and thereafter served its complaint upon respondent, Charles W. Mixer, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, testimony was heard and evidence taken in support of the charges stated in the complaint and no evidence was offered in opposition thereto. Thereafter this proceeding came on for final hearing and the Commission, having duly considered the record, and it now being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles W. Mixer, is an individual whose residence and principal place of business is the town of Hastings in the State of Michigan. At said place he is engaged in the sale of medicines trading under the name of Mixer Medicine Company, Charles W. Mixer, proprietor.

PAR. 2. Respondent, Charles W. Mixer, is the son of the late Dr. Lyman N. Mixer, who founded the business, hereinafter described.

in the year 1861. Dr. Lyman N. Mixer departed this life in the year 1903. In 1888 the aforesaid Dr. Lyman N. Mixer retired from said business and respondent, Charles W. Mixer, has conducted the business since that time. Respondent, Charles W. Mixer, is not a physician or surgeon; neither is he a chemist or pharmacist.

PAR. 3. Respondent, trading as aforesaid, solicits the sale of and sells prepared medicines for the treatment and cure of cancer. When orders are received for such medicines they are packed at said Hastings and shipped to persons ordering the same who are located in all of the States of the United States. Mixer's Cancer and Scrofula Syrup, hereinafter referred to, is also sold by respondent to druggists and shipped to them by respondent to their places of business, many of which are located in States other than the State of Michigan. These druggists in turn sell the same direct to the consuming public for use in the diseases of cancer and scrofula.

PAR. 4. Among the medicines so sold by respondent are:

| | |
|------------------------------------|------------------------------|
| Mixer's Cancer and Scrofula Syrup, | Mixer's Cancer Paste, |
| Mixer's Cancer and Tumor Absorber, | Mixer's Cancer Reducer, |
| Mixer's Cancer Salve, | Mixer's Cancer Reducing Oil. |

The said Cancer and Scrofula Syrup is made by respondent at his said place of business; the others are made for respondent by chemists whose names respondent refused to disclose.

PAR. 5. Dr. Max Cutler, the present director of the Tumor Clinic of Michael Reese Hospital at Chicago, has examined some 50,000 cases of cancer. He is an authority on the disease of cancer. He testified in substance as follows:

There are only three accepted methods of treating cancer; surgery, X-ray, and radium, and there is no disagreement among the medical profession as to these three methods. Millions of dollars have been expended in trying to find some drug or medicine that would be efficacious in the treatment of cancer, without success.

He testified that none of the said medicines or pastes of respondent has therapeutic value in cases of cancer:

No drug or paste known is a cure for cancer and their use has been discarded.

Dr. Sonnenscheien, an ear, nose, and throat specialist, testified that Mixer's Cancer and Scrofula Syrup has no therapeutic value in cases of scrofula.

The Commission finds that said medicines will not cure, or aid in the cure of cancer or scrofula, that the use of any or all of them does not constitute proper treatment in cases of cancer or scrofula, and that there is no therapeutic value in any or all of them when used in the treatment of either cancer or scrofula.

PAR. 6. When a patient writes to respondent indicating that he has, or suspects that he has cancer, he is supplied by respondent with a questionnaire, a copy of which is in evidence, marked "Com. Ex. 6." It contains questions as to the physical condition of such patient. From the answers which the patient makes to this questionnaire, the respondent maintains that he is able to determine whether or not the patient has cancer and the particular kind of cancer with which he is afflicted. When this questionnaire is filled out and received, and the answers indicate to him that the patient has cancer or scrofula, respondent prescribes Mixer's Cancer and Scrofula Syrup or some other of his said cancer remedies. Respondent does not make a physical examination of the patient.

The witness Dr. Max Cutler testified that it was quite impossible to make a diagnosis as to cancer from answers to such questionnaire. Doctors Stanbaugh, Sonnenscheien, and Dinswinger agreed with the testimony of Dr. Max Cutler as to the inadequacy of a diagnosis made from answers to questions propounded in said questionnaire.

The Commission finds that a diagnosis cannot be adequately made, nor can proper treatment for cancer or scrofula be prescribed from answers to the questions of said questionnaire.

PAR. 7. Respondent advertises his said cancer medicine and pastes in circulars, booklets and letters and on containers of the bottles and on labels appearing on bottles containing his said medicines sent to many purchasers and prospective purchasers residing outside of the State of Michigan, and in and through such advertising respondent represents:

(1) That he is a doctor of medicine.

On all the labels appearing on said medicines the names "Dr. Mixer" or "Drs. Mixer" are printed in plain type. In hundreds of purported testimonial letters which are sent to respondent's customers or prospective customers, the purported writers thereof use the name "Dr. Mixer", "Dr. Charles W. Mixer", or "Drs. Mixer";

(2) That respondent's said cancer medicines have therapeutic value, are proper treatment and cure for all kinds of cancer and scrofula;

(3) That he can adequately diagnose and properly prescribe for cancer and scrofula from a layman's answers to the list of questions propounded in said questionnaire;

(4) That his said medicines have restored to perfect health hundreds suffering from cancer and scrofulous afflictions;

(5) A booklet is sent to respondent's customers and prospective customers. It contains hundreds of purported testimonials from people claiming that they have been cured of cancer by the use of respondent's said cancer remedies. It also contains scores of grue-

some pictures of people who have been afflicted with cancer. A copy of this booklet is in evidence, marked "Com. Ex. 2."

PAR. 8. The statement and representations in respondent's advertising as described in paragraph 7 hereof are false and misleading in that—

(1) The use of said medicines or any of them in cases of cancer or scrofula does not constitute proper treatment therefor, and they or any of them have no therapeutic value or effect in such diseases; and such use is dangerous to the lives and health of patients taking the same, in that it postpones the procurement of proper and efficacious treatment for such diseases;

(2) Respondent is not a doctor of medicine;

(3) Respondent cannot adequately diagnose and prescribe for cancer and scrofula from answers made to the questions in said questionnaire;

(4) Said medicines have not restored to perfect health hundreds suffering from cancer and scrofula, nor have they helped or aided or relieved any person afflicted with cancer or scrofula;

(5) The pictures of those afflicted with cancer appearing in said Commission's Exhibit No. 2 have the tendency and capacity to deceive those observing them into the belief that those who are depicted therein have been cured of their afflictions by the use of respondent's medicines or can be cured by such use, when such is not the fact.

PAR. 9. The Union Munior du Haut Katanga of New York City, N. Y., sells and ships radium to physicians and hospitals throughout the several States of the United States for use in the treatment of cancer. Two tumor clinics in or near Chicago have a supply of radium valued at \$450,000, and other cancer hospitals throughout the United States have supplies of radium with values ranging to over \$300,000 each.

The General Electric X-Ray Corporation makes and sells an X-ray machine used in the treatment of cancer. It is sold to licensed practicing physicians and accredited institutions and hospitals, sanitariums, and clinics in every State. Some of the hospitals using them as treatment for cancer are the Warrick Memorial Cancer Clinic of Garfield Hospital, Washington, D. C., the Hood Kelley Hospital of Baltimore, Md., the Clinic of the University of Pennsylvania at Philadelphia, and the Memorial Hospital of New York City. The Kelly-Oett Manufacturing Company of Covington, Ky., makes X-ray machines for use in the treatment of cancer and other malignant afflictions and ships the same in interstate commerce, as do also the Westinghouse X-Ray Company and the Westinghouse Electric &

Manufacturing Company. Hundreds of these machines have been so sold and shipped for such use.

The respondent, in the sale of said medicines, is in competition in interstate commerce with other persons, copartnerships, and corporations who and which sell radium and X-ray apparatus for use in the treatment of the diseases of cancer and scrofula and who and which sell and ship the same from their places of business into and through the various States of the United States to the places of business or residences of the users thereof.

PAR. 10. Each and all of the statements and representations as to the efficacy of respondent's said medicines and methods of diagnosis contained in the advertising as set forth in paragraph 8 herein have and have had the tendency and capacity to mislead and deceive the ultimate consumers of said medicines into the belief that such statements and representations were and are true, and to induce them to purchase respondent's said medicines in such belief, and have and have had the tendency and capacity to divert trade to respondent from its said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and the briefs of the attorney for the Commission and of respondent, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusion that the respondent had violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and the Commission being fully advised in the premises—

It is ordered, That respondent, Charles W. Mixer, his agents, employees, and representatives, in connection with the advertising, offering for sale or sale in interstate commerce, and in the District of Columbia, of the products Mixer's Cancer and Scrofula Syrup,

Order

19 F. T. C.

Mixer's Cancer and Tumor Absorber, Mixer's Cancer Salve, Mixer's Cancer Paste, Mixer's Cancer Reducer, Mixer's Cancer Reducing Oil, or any other product or products of the same or substantially the same ingredients or compound, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, or on labels, bottles, containers or boxes, or otherwise—

(1) That said products, or any other product or products of the same, or substantially the same ingredients or compound, or either or any of them, will cure, aid in the cure, or have cured cancer, or can aid in the cure or have cured scrofula, or have therapeutic value in the treatment of cancer or scrofula;

(2) That cancer or scrofula can be correctly diagnosed by means of answers to questionnaires, or in any other manner except by and through a careful physical examination by a competent physician;

(3) That Charles W. Mixer is a physician or surgeon.

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

SUTTON BROTHERS, INCORPORATED

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

Docket 2193. Complaint, June 8, 1934—Order, Aug. 8, 1934

Consent order requiring respondent, its officers, etc., in connection with the manufacture and sale, offer, and advertisement of handkerchiefs in interstate commerce and in the District of Columbia, to cease and desist from directly or indirectly using or causing to be used the words, "Warranted pure linen cording", as a label upon handkerchiefs not made of linen, or otherwise to describe or designate handkerchiefs as linen unless the material contained therein is linen.

Mr. Morton Nesmith for the Commission.

Mr. Jacob Ansbacher, of New York City, for respondent.

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 Sutton Bros., Inc., hereinafter referred to as respondent, has been and 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Sutton Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City of New York in said State. Said respondent, Sutton Bros., Inc., is now, and since its organization in, to wit, the year of 1930, has been engaged in the manufacture and sale of handkerchiefs between and among the various States and Territories of the United States. It has manufactured and sold, and has caused and still causes, the said articles in which it deals, to be transported from its said place of business into and through other States of the United States to various jobbers and retailers located at points in various States of the United States. In the course and

Complaint

19 F. T. C.

conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of handkerchiefs in commerce between and among the various States of the United States.

PAR. 2. For many years prior to the date hereof, linen has proven superior to cotton fabrics in the manufacture of handkerchiefs because of its durability, smoother texture, and coolness, and is, therefore, more expensive and the consuming public have, for many years, considered and still consider that handkerchiefs or materials produced from flax and known as linen are much superior to those manufactured from cotton.

PAR. 3. (a) That the respondent, Sutton Bros., Inc., in the course and conduct of its business as aforesaid, has manufactured and sold to various jobbers and retailers at wholesale, and still does manufacture and sell to various jobbers and retailers, certain handkerchiefs which respondent plainly labels as follows:

Warranted Pure Linen Cording

(b) That said respondent, Sutton Bros., Inc., in the course and conduct of its business as aforesaid, has caused, and still causes, certain other handkerchiefs of said Sutton Bros., Inc., to be sold to various jobbers and retailers which said handkerchiefs respondent plainly labels as follows:

Warranted Pure Linen Cording

PAR. 4. (a) In truth and in fact the handkerchiefs so manufactured, labeled, and sold as described in paragraph 3 (a) contain more than 50 percent of cotton, and the label so placed upon said handkerchiefs by the respondent has the capacity and tendency to, and does mislead many among the aforesaid trade and many of the consuming public into the belief that respondent's said handkerchiefs are composed of pure linen as referred to in paragraph 2, and causes many of the said trade and many of the consuming public to purchase respondent's products in that belief.

(b) In truth and in fact the handkerchiefs caused to be sold by the respondent, as described in paragraph 3 (b) hereof, contain no linen whatsoever except the thread or threads around the border thereof, and the label so placed upon said handkerchiefs by respondent has the capacity and tendency to, and does mislead many among the aforesaid trade and many of the consuming public into the belief that respondent's said handkerchiefs are composed of pure linen, as referred to in paragraph 2 hereof, and causes many of the said trade

213

Order

and many of the consuming public to purchase respondent's products in that belief.

PAR. 5. Respondent, Sutton Bros., Inc., in the manufacture and sale of its handkerchiefs as aforesaid, ships and delivers its said products so labeled to its aforesaid jobbers and retailers. Said jobbers and retailers resell said handkerchiefs so labeled to the consuming public.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof, many persons, firms, and corporations who manufacture and sell handkerchiefs, and sell said products which are composed of pure linen and who rightfully and lawfully represent them to be so composed. There are others of said competitors who manufacture and sell handkerchiefs composed of other and inferior materials or fabrics and who do not represent that their products are composed of linen. The use by the respondent of said mislabeling or misbranding of its products as described in paragraph 3 hereof, has unfairly diverted trade from, and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 7. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of the respondent, in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission on the record, including the complaint of the Commission and respondent's answer thereto that it waive hearing on the charges set forth in the complaint, refrains from contesting the procedure, and pursuant to paragraph 2 of Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and serve upon respondent, without evidence and without the findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondent, Sutton Brothers, Inc., its officers, directors, agents, representatives, servants, and employees, in connection with the manufacture and sale of, offering for sale, and advertising of handkerchiefs in interstate commerce and in the District of Columbia, do cease and desist from:

Order

19 F. T. C.

Directly or indirectly using or causing to be used the words "Warranted pure linen cording", as a label upon handkerchiefs not made of linen, or otherwise to describe or designate handkerchiefs as linen unless the material contained therein is linen.

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

Complaint

IN THE MATTER OF
**AQUA SEAL CORPORATION AND DUPLAN SILK
 CORPORATION**

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

Docket 2194. Complaint, June 9, 1934—Order, Aug. 27, 1934

Consent order requiring respondent corporations, their agents, etc., in connection with the sale, advertisement, and offer in interstate commerce, of velvet fabrics, processed, treated, or finished with "Aqua-Sec" process to cease and desist from stating or representing to the public in advertisements in newspapers, or other publications, or otherwise, that velvet fabrics processed, treated, or finished with the "Aqua-Sec" process are thereafter permanently waterproof and waterspot proof; or that velvet fabrics so treated or articles of clothing made of them have those qualities or characteristics after the ordinary and usual drycleaning to which they may be subjected in ordinary use and wear; and

Ordered further that complaint be dismissed as to charges of use of unfair methods of competition in connection with sale in interstate commerce of silk fabrics processed, treated or finished with the "aqua-sec" process of the respondent Aqua Seal Corporation.

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 Aqua Seal Corporation and Duplan Silk Corporation, 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. Respondent Aqua Seal Corporation is a corporation, incorporated in or about November 1932 under the laws of the State of New York and having a place of business in the City of New York at all times since its incorporation.

PAR. 2. Respondent Duplan Silk Corporation is a corporation, incorporated in the year 1917 under the laws of Delaware and having a place of business in the City of New York, N. Y., at all times since its incorporation. It is engaged in the manufacture and in the business of the sale of silk, rayon, velvet, and textile fabrics, with factories for

Complaint

19 F. T. C.

the manufacture thereof in several cities or places in Pennsylvania, during the times above mentioned.

PAR. 3. The respondent, Aqua Seal Corporation is, and has been since on or about the date of its incorporation, the owner, or the licensee with the right to license its use to others, of a process called "Aqua-Sec", by means of which the surface of pile of fabrics of textiles subjected thereto, including silk and velvet, is impregnated with certain materials or chemicals used in the process for the purpose and with the effect of causing the fabrics subjected thereto, including silk and velvet, to repel or to resist, more or less, the application to them, or the penetration or saturation of them, and the effects thereof, such as water spots, by water or other liquids or soiling material.

PAR. 4. The respondent, Aqua Seal Corporation, during the time mentioned and referred to in paragraph 3 hereof, has made the United Piece Dye Works, a corporation organized and existing under the laws of New Jersey, and having a place of business at Lodi, N. J., its exclusive agent for the use of the "Aqua-Sec" process in the processing, treating or finishing of silk fabrics.

PAR. 5. During the time mentioned and referred to in paragraph 3 hereof, the Aqua Seal Corporation has granted the said United Piece Dye Works the right to use the "Aqua-Sec" process, under the license or agreement that the United Piece Dye Works will use the process exclusively in the processing, treating or finishing of silk fabrics only, for customers of the Aqua Seal Corporation, individuals, firms, or coporations designated to it by Aqua Seal Corporation, and on the further agreement, or understanding, that the United Piece Dye Works will purchase from Aqua Seal Corporation the materials and chemicals required in the use of the "Aqua-Sec" process and used therein, and will charge the said customers prices for the processing, treating, or finishing of the silk fabrics subject to the approval of the Aqua Seal Corporation.

PAR. 6. The respondent, Aqua Seal Corporation, during the times mentioned and referred to in paragraph 3 hereof, has made the Rochelle Park Velvet Co., Inc., a corporation organized and existing under the laws of New Jersey, and having a place of business at Rochelle Park, N. J., its exclusive agent for the use of the Aqua-Sec process in the processing, treating or finishing of velvet fabrics.

PAR. 7. During the times mentioned and referred to in paragraph 3 hereof, the Aqua Seal Corporation has granted the Rochelle Park Velvet Co., Inc., the right to use the Aqua-Sec process, under the license, or agreement, that the Rochelle Park Velvet Co., Inc., will use the process exclusively in processing, treating or finishing of velvet fabrics, only for customers of the Aqua Seal Corporation,

individuals, firms, or corporations designated to it by the Aqua Seal Corporation, and on the further agreement or understanding that the Rochelle Park Velvet Co., Inc., will purchase from Aqua Seal Corporation the materials and chemicals required in the use of the Aqua-Sec process and used therein, and will charge the said customers prices for the processing, treating or finishing of the velvet fabrics, subject to the approval of the Aqua Seal Corporation.

PAR. 8. During the times above mentioned and referred to, the United Piece Dye Works and the Rochelle Park Velvet Co., Inc., respectively, as the agents of the Aqua Seal Corporation, have processed, treated, or finished silk and velvet fabrics, using the Aqua-Sec process, only for the customers above referred to of the Aqua Seal Corporation, and they have used, exclusively, in connection with the Aqua-Sec process, in such instances, materials and chemicals sold to them by the Aqua Seal Corporation, and the said materials and chemicals, when so sold, have been caused by the Aqua Seal Corporation to be transported from Illinois to the said purchasers in New Jersey.

During said times, the Aqua Seal Corporation and its agents, United Piece Dye Works and the Rochelle Park Velvet Co., Inc., have respectively caused the fabrics processed, treated, or finished and impregnated, as above set forth, including the velvet fabrics of the respondent, Duplan Silk Corporation, hereinafter mentioned and referred to, to be transported from New Jersey to the said customers of the Aqua Seal Corporation in New York and other States.

PAR. 9. During the times above mentioned, the respondent, Aqua Seal Corporation, gave to the respondent, Duplan Silk Corporation, the exclusive right or license to have the Aqua-Sec process used on certain velvet fabrics manufactured or sold by the respondent Duplan Silk Corporation, and the respondents, during said times, have caused the velvet fabrics of the Duplan Silk Corporation to be processed, treated, or finished by the Aqua-Sec process and to be impregnated with materials or chemicals used therein by the Rochelle Park Velvet Co., Inc., at its place of business in New Jersey.

PAR. 10. During the times above mentioned, the respondent, Duplan Silk Corporation sold its velvet fabrics, processed, treated, or finished by the Rochelle Park Velvet Co., Inc., as aforesaid, with the Aqua-Sec process, under the trade name "L'Eau-Vel", to wholesale dealers and to retail dealers throughout the United States, for resale to the members of the public and to cloth cutters and dressmakers, for the making of clothing for sale by them to the public throughout

Complaint

19 F. T. C.

the United States, and caused said velvet fabrics, when so sold by it, to be transported from New York, or the State of origin of the shipment, into and through States other than New York, or the State of origin of the shipment, to the said purchasers.

PAR. 11. During the times mentioned and referred to in paragraph 3 hereof, other individuals, firms, and corporations than the Aqua Seal Corporation have been engaged in the business of the sale, to manufacturers and others engaged in the manufacture and sale of textiles and fabrics throughout the United States, of various materials and chemicals for use in various processes for processing, treating or finishing fabrics or textiles, including silk and velvet fabrics, by impregnating them with materials and chemicals used in such process, to avoid the effects of the penetration by, or the application of, water or other liquids or soiling material to such fabrics, such as water spots, and the said other individuals, firms and corporations have caused the said materials and chemicals, when so sold by them, to be transported from the State of origin of the shipment thereof, to, into, and through other States, to the purchasers.

PAR. 12. During the said times, other individuals, firms, and corporations than the respondent Duplan Silk Corporation are and have been engaged, some of them in the business of the sale of silk and velvet fabrics in their usual natural-finished condition when not subjected to processing, treating, or finishing by the Aqua-Sec or other such processes, and others of them in the business of the sale of silk and velvet fabrics which have been subjected to other processes than the Aqua-Sec process, for the purpose of impregnating the surface or pile of such fabrics, or textiles, to cause them to repel or resist penetration of them by water or other liquids or soiling material, and to avoid the effects of the application to them of water or other liquids or soiling material, and of penetration thereby, such as water spots.

PAR. 13. The respondents, during the times above mentioned and referred to, are and have been, respectively, in substantial competition, in interstate commerce, in the sale of velvet and silk fabrics, and in causing the processing and impregnating of such fabrics with materials and chemicals for the purpose above referred to, with the other individuals, firms, and corporations referred to in paragraphs 11 and 12 hereof.

PAR. 14. During the times above mentioned, the respondents, in connection with the sale of velvet and silk fabrics processed, treated or finished with the Aqua-Sec process, and sold or caused to be sold by the respondents and others to wholesale and retail dealers and resold by said dealers to the public for use or wear including the

velvet fabrics sold by respondent Duplan Silk Corporation under the name "L'Eau-Vel", or other trade name, have caused it to be stated and represented to the trade and public, in newspapers, periodicals, and other publications, and verbally through their agents and employees, that the said fabrics, including the said L'Eau-Vel velvet, processed, treated or finished with the Aqua-Sec process, were permanently waterproof and waterspot proof, and that they held these qualities or characteristics both before and after drycleaning, and further stated and represented to the trade and to the public that no other velvet or silk fabrics than those processed, treated, or finished by the Aqua-Sec process had the qualities or characteristics of being permanently waterproof and permanently waterspot proof before and after cleaning.

PAR. 15. The statements and representations made and caused to be made by respondents, mentioned and referred to in paragraph 14 hereof, were untrue when made, and were false representations of material facts concerning the effects of the use of the Aqua-Sec process on silk and velvet fabrics, and concerning the qualities of silk and velvet fabrics processed, treated, or finished by the Aqua-Sec process, including the velvet fabrics of the Duplan Silk Corporation and the clothing and garments made of them; and the respondents knew, at the time said statements and representations were made, or with the exercise of reasonable care should have known, that said statements and representations were untrue, and that the velvet and silk fabrics processed, treated, or finished by the Aqua-Sec process, including the said L'Eau-Vel velvet, and clothing or garments made from them, were not and are not permanently waterproof or waterspot proof, and do not and will not withstand the usual amount or number of drycleanings ordinarily given such fabrics, clothing or garments by members of the public during the reasonable life or use of such fabrics, or of the clothing and garments made of them.

PAR. 16. Other processes than the said Aqua-Sec process are and have been employed by other manufacturers of fabrics sold by them to wholesale and retail dealers, and to garmentmakers for resale to the public, for the purpose of processing, treating, or finishing such fabrics, including velvet and silk, by impregnating the surface or pile of the fabrics so as to repel and resist the application and the effect of the application to them of water or other liquids or soiling material, and said other manufacturers and wholesale and retail dealers do not represent that velvet and silk fabrics processed, treated, or finished with the other processes referred to were thereby made permanently waterproof, or permanently waterspot proof.

PAR. 17. The said statements and representations made and caused to be made by respondents, and mentioned and referred to in paragraphs 14 and 15 hereof, to the effect that no other velvet or silk fabrics than those processed, treated, or finished by the Aqua-Sec process had the said characteristics of being permanently waterproof and permanently waterspot proof before and after cleaning, falsely represented by implication that the velvet or silk fabrics, including L'Eau-Vel velvet, processed, treated, or finished by the Aqua-Sec process, had those said qualities.

PAR. 18. The statements and representations made and caused to be made by respondents, mentioned and referred to in paragraphs 14 and 15 hereof, had the capacity and tendency to deceive and mislead the trade and the public and the trade and public were deceived and misled thereby into believing among other things that silk and velvet fabrics which were subjected to the Aqua-Sec process were permanently waterproofed and waterspot proof; that the said fabrics, so treated or finished, and the clothing or garments made of them, were permanently waterproof and waterspot proof and that the said fabrics and clothing or garments retained and had such qualities before and after the usual cleaning or drycleaning ordinarily given such fabrics, clothing, or garments during their reasonable life or use; that the said fabrics so treated or finished and clothing or garments made of them, were the only silk and velvet fabrics, and clothing or garments, that had the said characteristics or qualities and that silk and velvet fabrics subjected to or treated and finished by other such processes did not have the said characteristics or qualities; and into relying on such belief, into buying the silk and velvet fabrics processed by the Aqua-Sec process, and clothing or garments made of them, including the velvet fabric L'Eau-Vel, and the clothing or garments made of it, in preference to the silk and velvet fabrics processed by other such processes and the clothing or garments made of them, as well as in preference to silk and velvet fabrics not processed for said purposes and clothing or garments made of such nonprocessed silk and velvet fabrics.

PAR. 19. In consequence of the above practices of the respondents in connection with the use and the effects of the use of the Aqua-Sec process, and in connection with the above statements and representations made by them and caused by them to be made by others, in the sale of silk and velvet fabrics, including L'Eau-Vel velvet, as above set forth, trade in the sale of silk and velvet fabrics was diverted from respondents' competitors to the respondents.

PAR. 20. The above acts and things done and caused to be done by the respondents are and were, each and all, to the prejudice of

217

Order

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 provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on June 9, 1934, issued its complaint against the above named respondents, in which complaint it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On August 14, 1934, the respondents filed their several answers to said complaint, wherein the respondents severally consented that the Federal Trade Commission may make, enter, and serve upon them an order to cease and desist from the violations of law alleged in the complaint in connection with the sale in interstate commerce of velvet fabrics processed, treated, or finished with the "Aqua-Sec" process of the respondent, Aqua Seal Corporation, in accordance with the provisions of section (2) of rule III of the Rules of Practice of the Commission, and the Commission being fully advised in the premises:

It is now ordered, That the respondents Aqua Seal Corporation and Duplan Silk Corporation, and each of them, their agents, employees, and representatives, in connection with the sale, advertising, and offering for sale in interstate commerce of velvet fabrics processed, treated, or finished with "Aqua-Sec" process, do—

Cease and desist, From stating or representing to the trade and public, in advertisements in newspapers, periodicals, or other publications, or otherwise causing to be stated or represented, either directly or indirectly, to the trade and public, that velvet fabrics processed, treated, or finished with the "Aqua-Sec" process are thereafter permanently waterproof and waterspot proof; or that velvet fabrics so treated or articles of clothing made of them have those qualities or characteristics after the ordinary and usual dry-cleaning to which they may be subjected in ordinary use and wear.

It is further ordered, That the complaint be and the same is hereby dismissed as to the charges of the use of unfair methods of competition in connection with the sale in interstate commerce of silk

Order

19 F. T. C.

fabrics processed, treated, or finished with the "Aqua-Sec" process of the respondent Aqua Seal Corporation.

It is further ordered, That the said respondents, Aqua Seal Corporation and Duplan Silk Corporation, shall each, within 30 days after date of service on them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they, respectively, have complied and are complying with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

LOUIS A. MILLER DOING BUSINESS UNDER TRADE
NAME SOUTHERN MILLING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1617. Complaint, Sept. 5, 1929¹—Order, Sept. 5, 1934*

Consent order requiring respondent, doing business as aforesaid, his agents, etc., to cease and desist from carrying on the sale of flour in commerce among the several States, under name "Southern Milling Company", or any other name which includes the word "milling" or any other word or words of like import, and from making representations through advertisements, circulars, etc., or in any other manner designed to promote or affect interstate commerce, that he is a manufacturer of flour or that the flour sold by him comes direct from manufacturer to purchaser, unless or until respondent, doing business as aforesaid Southern Milling Company, using such word or 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 him under such title or name, or by or through any such representation; or "unless and until said respondent shall insert and use, also, the words 'Not Grinders of Wheat', in immediate conjunction with such trade name or other designation, in letters equally legible and conspicuous, when said trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise."

Mr. Edward L. Smith and Mr. John W. Hilldrop for the Commission.

Price, Schlater & Price, of Nashville, Tenn., for respondent.

COMPLAINT¹

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Louis A. Miller, an individual, doing business under the trade name of Southern Milling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

¹Amended.

PARAGRAPH 1. The respondent, Louis A. Miller, is an individual doing business under the name of Southern Milling Company. Respondent is engaged in the city of Nashville, State of Tennessee, in the business of soliciting, principally by mail, orders for, and selling wheat flour, both plain and self-rising, under the trade name aforesaid. He solicits orders from dealers throughout the Southeastern States, and causes to be shipped and delivered in performance thereof said products to customers located in various States other than the State of Tennessee. Such orders are filled for him by the Mero Mills located at Nashville, Tenn., which conducts a business of buying and packing flour. The Mero Mills does not grind or manufacture wheat into flour. The flour furnished by the Mero Mills to fill the orders secured as aforesaid by respondent is packed in bags supplied by respondent on which bags appears in prominent type the words, "*Southern Milling Company, Nashville, Tennessee*".

PAR. 2. In the course and conduct of his business as above described respondent in soliciting orders by mail uses stationery upon the letterheads of which appears—

SOUTHERN MILLING COMPANY
High Grade Flour and Mill Feed

and in his business correspondence he makes representations to customers and prospective customers implying that he operates a mill and grinds or manufactures wheat into the flour which he sells. Respondent does not grind or manufacture flour and owns or controls no equipment for so doing.

PAR. 3. The use by respondent of the trade name Southern Milling Company and other representations in his business correspondence as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of flour to believe that in purchasing from respondent they are buying flour direct from a miller or manufacturer of flour, that is one that makes flour by rolling, grinding, or other process of crushing wheat and extracting therefrom the product known as flour, and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of flour from him on that understanding and belief; and said representations constitute unfair methods of competition with such millers or manufacturers of flour likewise engaged in interstate commerce, and with sellers of flour likewise engaged in interstate commerce who do not grind or manufacture the wheat into flour but who buy and sell flour manufactured by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers

of flour in that said representations of respondent are false and misleading and tend to take away their business.

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.

ORDER TO CEASE AND DESIST

Louis A. Miller, doing business under the trade name Southern Milling Company, respondent herein, having filed with this Commission his answer to the amended complaint in this proceeding, in which said answer he refrains from contesting the proceeding and, relying upon paragraph (2) of Rule III of the Commission's Rules of Practice, he consents in and by the said answer that the Commission, as provided in paragraph (2) of Rule III of its Rules of Practice, may make, enter, issue, and serve upon him an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the said answer, and being fully advised in the premises:

Now, therefore, it is hereby ordered, That the said respondent, Louis A. Miller, doing business under the trade name of Southern Milling Company, his agents, representatives, and employees, forthwith cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under the name Southern Milling Company, or any other name which includes the word "milling", or any other word or words of like import, and from making representations through advertisements, circulars, correspondence, stationery, or in any other manner whatsoever, designed to promote or otherwise affect interstate commerce, that he is a manufacturer of flour, or that the flour sold by him comes direct from manufacturer to purchaser, unless and until said respondent, Louis A. Miller, doing business under the trade name of Southern Milling Company, using such word or 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 him under such title or name, or by or through any such representation; unless and until said respondent shall insert and use, also, the words "not grinders of wheat", in immediate conjunction with such trade name or other designation, in letters equally

Order

19 F. T. C.

legible and conspicuous, when said trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise.

And it is hereby further ordered, That the said respondent shall, within 60 days from the date of the service upon him of this order, 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
BAYER COMPANY, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2192. Complaint, June 8, 1934—Order, Sept. 14, 1934*

Consent order requiring respondent, its officers, etc., in connection with sale and offer in interstate commerce and in District of Columbia of aspirin, to cease and desist from—

- (a) Representing that "Aspirin is the trade mark of Bayer manufacture of Monoaceticacidester of Salicylicacid" and from using said phrase in its advertising in newspapers, periodicals, or other publications or printed matter, or by radio broadcasting or in any other way, and from using any other phrase or statement of similar import; provided, that where the word "aspirin" has been held in certain foreign countries to be respondent's directly or indirectly owned valid trade mark therein, this order shall not apply to advertising or packages intended for circulation or sale in such countries;
- (b) Making such representations, without proper qualification or explanation, concerning its product, in advertising, radio broadcasting or otherwise, as that "no harmful after-effects follow its use", "does not upset the stomach", "cannot harm the heart", "anyone can take Bayer Aspirin", "you could take it every day without harm", "Take enough to assure your complete comfort", "If it is genuine aspirin, it cannot possibly hurt you", "Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis", provided that nothing aforesaid shall be construed as preventing respondent from making proper therapeutic claims or recommendations, based upon reputable medical opinion or recognized medical or pharmaceutical literature; and
- (c) Advertising or representing in newspapers or otherwise that aspirin not made by respondent is counterfeit or spurious.

Mr. Edward L. Smith for the Commission.

Mr. Edward S. Rogers, of New York City, for respondent.

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 Bayer Company, Inc., a corporation hereinafter referred to as respondent, has been and 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

Complaint

19 F. T. C.

public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bayer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 170 Varick Street in the City of New York in said State. Respondent, for more than four years last past has been and still is engaged in manufacturing a certain pharmaceutical preparation commonly called and known as "Aspirin." Aspirin is made of a drug technically known as acetyl salicylic acid for which drug the said respondent uses a substituted name monoaceticacidester of salicylicacid", and in offering said product for sale, and selling the same, in commerce between the State of New York and the several States of the United States and the District of Columbia. When said aspirin is sold, respondent causes the same to be transported from its place of manufacture thereof within said State of New York through and into the several States of the United States and the District of Columbia to the purchasers thereof in the State of New York, the several States of the United States and the District of Columbia.

There has been for more than four years last past and still is a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and the District of Columbia. In the course and conduct of its said business respondent is now and for more than four years last past has been in substantial competition with other corporations, firms, persons and partnerships engaged in the manufacture of aspirin and in the sale thereof between and among the various States of the United States and the District of Columbia, shipping such aspirin when sold by them to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. The predecessor of the respondent, a German corporation, first engaged in the manufacture of the drug acetyl salicylic acid which was its own invention. The importation of said product into the United States first began during the year 1899. On August 1, 1898, respondent's predecessor applied for a patent in the United States covering said invention and therein described the said product as acetyl salicylic acid. The patent issued on February 27, 1900, and expired on February 27, 1917. In May 1899 respondent's predecessor registered the name "Aspirin" as a trade mark in the United States. At the time of the issuance of the patent and for some years thereafter, but prior to the year 1915, said product was sold under the

name "Aspirin" in the form of powder to manufacturing chemists, retail druggists, and physicians. During this period of time said product was only sold to the public on prescriptions of physicians.

On or about 1904 respondent's predecessor began to sell said product under the name aspirin in powder form to manufacturing chemists for the purpose of making it into tablets for sale to the retail trade for resale to the consuming public. Said manufacturing chemists sold said product in tablet form to the retail trade under the name aspirin and in no case did the name of the respondent or its predecessor appear upon the containers of the said product. Said manufacturing chemists in each case, in connection with such sales, used his own name upon the container or the name aspirin or his own name in connection with the name aspirin. The consuming public purchased the said product from retail druggists under the name aspirin.

Prior to the year 1915 respondent or its predecessor made no sales of said product as aspirin or under the name aspirin to the trade for resale to the consuming public or to the consuming public direct and prior to the year 1915 no literature of the respondent or its predecessor advertising said product reached the consuming public. Late in the year 1915 the respondent or its predecessor ceased selling said manufacturing chemists and began marketing said product made in tablet form under the name aspirin to the retail drug trade for resale to the consuming public.

Upon the expiration of the said patent on February 27, 1917, the said product passed into the public domain and with it in connection with sales to the consuming public the word aspirin which by usage had become the name for the drug acetyl salicylic acid and descriptive of same and thereby the right to use the name aspirin in connection with sales of said product to the consuming public became free to all marketers or sellers and upon the expiration of said patent on February 27, 1917, all marketers or sellers acquired the lawful right and became free, in connection with sales to the trade for resale to the consuming public, to market, pack, and ship acetyl salicylic acid in containers for public sale, use, and consumption, labeled aspirin, provided such containers were marketed, packed, and shipped to said retail trade in containers or outer wrappers which did not bear or carry the name aspirin, and provided correspondence, invoices, and bills of lading in connection with such sales to the retail trade, referred to the said product or drug only as acetyl salicylic acid.

On November 30, 1918, the United States Patent Office declared the said trade mark registered by respondent or its predecessor in May, 1899, was no longer valid and ordered its cancellation.

Complaint

19 F. T. C.

PAR. 2. Respondent distributes its said product to the ultimate purchasers or consumers thereof largely through wholesale dealers, jobbers, and retail merchants. In aid of its sales to such dealers for ultimate use by the consuming public, and for the purpose of creating a demand upon the part of the consuming public for its said product, respondent now causes, and for more than four years last past has caused, advertisements to be issued, published and circulated to and among the general public of the United States in newspapers, magazines and other publications, and in other forms of printed matter, and by radio broadcasting, and in other ways.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false, and misleading statements, as will be more particularly set forth hereinafter.

PAR. 4. By and in the ways hereinabove referred to, respondent has represented and still represents to the general public, among other things, as follows: "Aspirin is the trademark of Bayer manufacture of monoaceticacidester of salicylicacid." In truth and in fact, so far as concerns the general public, and so far as relates to the rights of respondent's competitors to sell said product to the public by and under the name of "Aspirin", said representation is unfounded in fact and is false and misleading for the reasons set forth in paragraph 2 hereof.

Said representation has the tendency and capacity to mislead and deceive the public into the belief that no one other than respondent has the right to sell aspirin to the public, and that acetyl salicylic acid offered for sale and sold to the public by anyone other than respondent under the name aspirin or for and as aspirin, is offered for sale and sold unlawfully and without right and is spurious, ineffective, or dangerous and is not acetyl salicylic acid. By said false and misleading statement and representation trade is diverted to respondent from its competitors to the disadvantage and injury of such competitors, and to the unfair advantage of respondent.

PAR. 5. In the ways and by the means hereinbefore alleged, respondent makes to the general public the following and many other similar and equivalent statements and representations with reference to the therapeutic value of its said product, and its effect upon the users thereof:

No harmful after-effects follow its use.

It does not depress the heart.

It does not upset the stomach.

It does nothing but stop the pain.

It cannot harm the heart.

Bayer aspirin is always safe.

But a more important advantage to the tablets of Bayer manufacture is their absolute safety.

Perfectly harmless.

Anyone can take Bayer Aspirin.

You could take it every day without harm.

Take Bayer Aspirin for any ache or pain, and take enough to end it. There is no harm in its free use.

Take enough to assure your complete comfort. If it is genuine aspirin, it cannot possibly hurt you.

There is no quicker form of relief for a bad headache, neuralgia, neuritis, or other severe pain.

From a grumbling tooth-ache to those rheumatic pains which seem almost to bend the bones, Bayer Aspirin is ready with its quick relief—and always works.

Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis, colds, toothache, neuralgia, sore-throat, lumbago, rheumatism.

Take one tablet—and go to sleep.

This applies particularly to nervous patients in whom aspirin not only relieves suffering, but acts as a sedative and induces rest at night.

The statements above set forth have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's aspirin:

(1) That the tablets will quickly relieve any and every pain from which the user is suffering;

(2) That the tablets will relieve any and every enumerated ailment or disease from which the user may be suffering;

(3) That any user may safely take as many of respondent's tablets as may be necessary to give relief from the disease or pain from which the user is suffering—and continue to take them, until relieved;

(4) That as a cure for sleeplessness, the tablets not only relieve pain, but act as a sedative and always induce sleep;

(5) That the use of the tablets is absolutely safe in every case and cannot possibly result in harm to any user in any amount or in any case;

(6) That aspirin made by any other manufacturer is harmful, unsafe, and will not produce any beneficial results that may be obtained by the use of respondent's aspirin.

Whereas in truth and in fact:

(1) There are persons by whom said tablets may not safely be taken even in small or moderate doses;

(2) There are many persons who may not safely take into the system amounts in excess of the prescribed or usual dose;

(3) There are many persons to whom the use of such tablets in excessive amounts is highly dangerous and may be fatal;

(4) There are pains and enumerated ailments or diseases that the use of respondent's tablets will not relieve and for which their use is not proper treatment;

Complaint

19 F. T. C.

(5) The use of said tablets will not relieve all users of sleeplessness or any user from all cases of sleeplessness, and said tablets may not safely be used by all until sleep is induced thereby. Said drug may relieve pain, but has no sedative or hypnotic properties, and has no direct effect upon inducing sleep;

(6) Buyers and users of respondent's tablets do not know in advance, and may not by any available means ascertain, that in their respective cases the use of respondent's tablets cannot be injurious, or that they may safely use the same in any and all quantities, in any and every case, and until relieved from pains or from any or all of the ailments enumerated by respondent as above alleged;

(7) At most, said tablets may be effectively used as indicated for the relief of pain and discomfort incident to or resulting from the several ailments, infections or diseases so enumerated by respondent, but they are not adequate treatment for the pathology underlying the several enumerated conditions, and will not relieve, check, remove, or cure the same;

(8) Acetyl salicylic acid manufactured by competitors of respondent and sold by them as aspirin is as safe and as harmless as is respondent's aspirin and will produce whatever beneficial results may be produced by respondent's aspirin.

PAR. 6. In the ways and by the means hereinbefore alleged, respondent makes to the purchasing public certain false and misleading statements in relation to said products of respondent's said competitors, and in disparagement thereof. Such statements and representations have been and are in the words hereinafter set forth, also in words similar or equivalent thereto, to wit:

Warning! If you're told some other preparation is the same as Genuine Bayer Aspirin, Beware!

Take Care! Counterfeit Aspirin! Thousands of boxes of counterfeit aspirin have been put on the market. Watch out. Take no chances and flatly refuse to accept any box not marked "Genuine Bayer Aspirin". Don't put any tablet not marked "Bayer" into your stomach. Tell your family and your friends this. Refuse any preparation offered you as the "same" or "like" Genuine Bayer Aspirin.

Said false and misleading statements have the capacity to and are calculated to mislead and deceive the purchasing public into the beliefs that only aspirin sold by respondent is true aspirin, and that aspirin sold by its competitors is not aspirin, has none of the properties of the aspirin sold by the respondent, and is not as beneficial as is respondent's aspirin, is not chemically the same as respondent's aspirin, and is counterfeit aspirin and spurious aspirin, whereas in truth and in fact as hereinbefore alleged, acetyl salicylic acid manufactured and sold by competitors of the respondent as aspirin has all

of the properties of acetyl salicylic acid sold by the respondent as aspirin and is as beneficial as is respondent's aspirin and is the same as respondent's aspirin, and is not counterfeit or spurious, and is aspirin just as respondent's aspirin is aspirin.

PAR. 7. The above alleged act and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraphs 4, 5, and 6 hereof, and to purchase respondent's aspirin in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 8. 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

Bayer Company, Inc., the respondent herein, by its counsel, Edward S. Rogers, Esq., having filed its answer to the complaint in this proceeding, in which answer it states that it desires to waive hearing on the charges set forth in the complaint herein and not to contest the proceeding, consenting in and by its said answer that as provided in paragraph 2 of rule III of the Commission's Rules of Practice, the Commission without trial, without evidence and without findings as to the facts or other intervening procedure may make, enter, and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint;

And the Commission having duly considered the said answer and being fully advised in the premises—

Now, therefore, it is hereby ordered, That said Bayer Company, Inc., the said respondent, its officers, agents, servants, and employees, in the sale and offering for sale by it in interstate commerce and in the District of Columbia of aspirin forthwith cease and desist:

1. From representing that and from using the phrase "Aspirin is the trade mark of Bayer manufacture of Monoaceticacidester of Salicylicacid" in its advertising in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way and from using any other phrase or statement of similar import, tenor, or substance. Provided, however, that where the word "Aspirin" has been held in certain foreign countries to be respondent's directly or indirectly owned valid trade

mark therein, this order shall not apply to advertising or packages intended for circulation or sale in such countries.

2. From making unless properly qualified, limited or explained, any of the following representations concerning respondent's product, or any other similar representation or any representations of similar tenor, import or substance, in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way, to wit:

No harmful after-effects follow its use.

It does not depress the heart.

It does not upset the stomach.

It does nothing but stop the pain.

It cannot harm the heart.

Bayer aspirin is always safe.

But a more important advantage to the tablets of Bayer manufacture is their absolute safety.

Perfectly harmless.

Anyone can take Bayer Aspirin.

You could take it every day without harm.

Take Bayer Aspirin for any ache or pain, and take enough to end it. There is no harm in its free use.

Take enough to assure your complete comfort. If it is genuine aspirin, it cannot possibly hurt you.

There is no quicker form of relief for a bad headache, neuralgia, neuritis, or other severe pain.

From a grumbling toothache to those rheumatic pains which seem almost to bend the bones, Bayer Aspirin is ready with its quick relief—and always works.

Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis, colds, toothache, neuralgia, sore throat, lumbago, rheumatism.

Take one tablet—and go to sleep.

This applies particularly to nervous patients in whom aspirin not only relieves suffering, but acts as a sedative and induces rest at night.

Nothing in this order shall be construed as preventing the respondent from making proper therapeutic claims or recommendations which are based upon reputable medical opinion or recognized medical or pharmaceutical literature.

3. From advertising or representing in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way that aspirin not manufactured by the said respondent is counterfeit or spurious.

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

Complaint

IN THE MATTER OF
 UNITED STATES ENVELOPE COMPANY

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

Docket 2208. Complaint, July 13, 1934—Order, Sept. 22, 1934

Consent order requiring respondent, its agents, etc., in connection with the sale, advertisement, and offer of paper in interstate commerce, to cease and desist from use of the words "Japan", "Milano", or "Oxford", or any other words which may imply or import foreign origin of the paper, as the brand name or as part of the brand name or designation of paper made in the United States, either in the watermark of the paper or in advertisements in newspapers, periodicals, sample books, or other publications, or otherwise, unless and until the words or phrase, "Made in U. S. A." be printed in legible letters immediately in connection therewith; and *Ordered further*, That the charges in the complaint of the use of unfair practices, in connection with the sale in interstate commerce, of paper branded or marked "hand-made", be, and the same are hereby dismissed for the reason that such paper is in fact hand made.

Mr. Edward E. Reardon for the Commission.

Mr. Henry A. Wise, of Kiptopeke, Va., for respondent.

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 the United States Envelope Company, hereinafter referred to as respondent, has been and now is 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. Respondent, United States Envelope Company, is a corporation, incorporated on or about August 18, 1898, under the laws of the State of Maine, and having its principal place of business in Springfield, Mass.

PAR. 2. The respondent is and has been at all times since its incorporation engaged in the business of the manufacture and of the importation and of the sale of paper for various purposes of use, including bookprint paper and paper which respondent has previously converted into writing paper and stationery and sells for use for social and mercantile correspondence and other business purposes

Complaint

19 F. T. C.

in the form, among others in which it is sold by respondent, of envelopes and single and folded sheets and cards.

PAR. 3. During all of the times above mentioned and referred to, the respondent has sold and still sells its paper, including the paper mentioned and referred to in paragraphs 2, 5, 6, 8, 9, 12, and 13 hereof, to individuals, firms, and corporations, the purchasers, dealers in, and users thereof located in the District of Columbia and in the various States of the United States other than Massachusetts and other than the State of origin of the shipment of the paper to them.

The respondent during all the times above mentioned and referred to has caused and still causes the paper when so sold by it to be transported from Massachusetts or from the State of the origin of the shipment to, into, and through other States and the District of Columbia, to the purchasers.

PAR. 4. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States are and have been engaged in the business of the manufacture and of the importation and of the conversion and sale of paper for the purposes of use mentioned and referred to in paragraph 2 hereof, to dealers for resale by them to the public and to members of the public, purchasers, and users thereof, located in the District of Columbia and in the various States of the United States, and the sellers have caused the paper when so sold by them, respectively, to be transported from the State of the seller or from the State of origin of the shipment to, into, and through other States and the District of Columbia to the purchasers.

PAR. 5. During all the times above mentioned and referred to the respondent has been, and it still is in substantial competition in interstate commerce in the sale of its paper with the other individuals, firms, and corporations referred to in paragraph 4 hereof.

PAR. 6. During all the times above mentioned and referred to, some of the paper mentioned and referred to in paragraphs hereof 2 to 5, inclusive, sold by respondent and by some of those referred to as sellers in paragraph 4 hereof, has been made by machine process and sold as machine-made paper and some of it has been made by hand and sold as hand-made paper.

PAR. 7. In Italy, England, Japan, and other foreign countries, paper has been made by hand for centuries for the purposes of use mentioned and referred to in paragraph 2 hereof and it is still being so made in those countries.

PAR. 8. During all of the times mentioned and referred to in paragraphs 2 to 6 hereof, inclusive, paper made by hand and paper made by machine process has been imported into the United States from

the foreign countries mentioned and referred to in paragraph 7 hereof and sold by dealers, among others, by the respondent and by the sellers above mentioned and referred to, to the retail and wholesale trade for resale to the public throughout the United States for the purposes of use mentioned in paragraph 2 hereof.

PAR. 9. Prior to and during all the times above mentioned and referred to, paper made by hand in foreign countries, and paper made in those countries by machine process for sale for the purposes of use mentioned and referred to in paragraph 2 hereof, has been described by many of the manufacturers thereof by foreign-language words and foreign-language brand names and has been imported into the United States and resold for the said purposes of use by dealers, among others by the respondent and by those mentioned and referred to above as sellers, to the public in the United States under such foreign-language description and under foreign-language brand names, indicating the name of the foreign city or country in which the paper was produced or the name of its foreign manufacturer.

PAR. 10. Paper made by hand in the United States and in foreign countries for the purposes of use mentioned and referred to in paragraph 2 hereof is and has been more costly to make and is and has been of a grade and quality for some of the above-mentioned purposes of use superior to paper made by machine process, and hand-made paper is and has been considered by a substantial number of the public in the United States to be more desirable for such purposes of use than paper made by machine process.

PAR. 11. Paper made by hand and by machine process in the foreign countries, mentioned and referred to in paragraph 7 hereof, and sold in the United States during the times mentioned and referred to in said paragraph, is and has been considered by a substantial part of the public in the United States to be of a quality superior and more desirable, respectively, for some of the aforesaid purposes of use than paper made by hand or by machine process in the United States.

PAR. 12. The respondent during all of the times mentioned and referred to in paragraphs 2 and 3 hereof has caused and still causes some of its paper, mentioned and referred to in the above paragraphs 2, 3, 5, and 6, and which was made in the United States, to be represented and described on samples of the paper in swatch books or sample books used by respondent's salesmen and agents in selling the paper, and in respondent's advertising in newspapers, magazines, and periodicals which have been circulated among the trade and public throughout the United States, and orally in sales talks by its agents and salesmen, and in other ways, as "Linweave Japan", "Linweave Milano", "Linweave England", and "Linweave Oxford", and

during said times the respondent has caused and still causes some of this said paper which was manufactured by machine process to be represented as "hand-made" on labels, on samples thereof, and by means of watermarks on the paper itself and in other ways.

PAR. 13. During all the times mentioned and referred to in paragraph 12 hereof, the respondent by means of the representations made in its swatch books or sample books, by means of watermarks on its paper, and by means of the statements and representations made by its salesmen and agents, and contained in its advertising, as set forth in paragraph 12 hereof, was enabled to sell, and by means thereof the respondent sold its said paper, mentioned and referred to in paragraph 12 hereof as "Linweave Japan", "Linweave Milano", "Linweave England", "Linweave Oxford", and the machine-made paper represented as hand-made, to wholesale and retail dealers therein and to members of the public, users and consumers of paper, as and for paper, respectively, made in Japan, Italy, England, and paper that was hand-made.

PAR. 14. The above practices of the respondent in selling its paper on the representations mentioned and referred to in paragraph 13 hereof have the capacity and tendency to mislead and deceive members of the public, users and consumers of paper and dealers, purchasers from respondent, and caused the dealers, in the belief that said false representations mentioned and referred to in paragraph 12 hereof were true, to pass on and repeat the same to and thereby mislead and deceive members of the public, purchasers, who purchased respondent's said paper for use or consumption, and the said members of the public and dealers who bought respondent's said paper have been misled and deceived by respondent's said practices into the belief that the respondent's said representations were true and in reliance thereon into purchasing respondent's said paper. In consequence thereof trade in paper described in paragraph 2 hereof was diverted from respondent's competitors to respondent.

PAR. 15. The above acts and things done and caused to be done by the respondent are and were each and all to the prejudice of the public and of respondent's 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 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 July 13, 1934, 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 19, 1934, the respondent filed its answer to said complaint, wherein it consents that the Federal Trade Commission may make, enter, and serve upon it an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of paper made in the United States and sold under the names or brands, "Linweave Japan", "Linweave Milano", and "Linweave Oxford", in accordance with the provisions of section (2) of rule III of the Rules of Practice of the Commission, and the Commission being fully advised in the premises—

It is now ordered, That the respondent, United States Envelope Company, its agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of paper in interstate commerce, do—

Cease and desist, From the use of the words "Japan", "Milano", and "Oxford", and from the use of each of them, and of any other word or words which may imply or impart foreign origin of the paper, as the brand name or as part of the brand name or designation of paper made in the United States, either in the watermark of the paper or in advertisements in newspapers, periodicals, sample books or other publications, or otherwise, unless and until the words or phrase, "Made in U. S. A." be printed in legible letters immediately in connection therewith.

It is further ordered, That the charges in the complaint of the use of unfair practices, in connection with the sale in interstate commerce of paper branded or marked "hand-made", be, and the same are hereby dismissed for the reason that such paper is in fact hand-made.

It is further ordered, That the said respondent, United States Envelope Company, shall, within 30 days after the date of service on 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 and is complying with the order to cease and desist hereinabove set forth.

Complaint

19 F. T. C.

IN THE MATTER OF
**IRVING ROY JACOBSON AND PROGRESSIVE EDUCATION
 SOCIETY, INC.**

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

Docket 2132. Complaint, Aug. 28, 1934¹—Order, Sept. 24, 1934

Consent order requiring respondents, their officers, etc., in connection with the sale of books or sets of books in interstate commerce and the District of Columbia, to cease and desist from—

- (a) Representing to the public or to prospective purchasers that a set of books, "Source Book" or any other book or set will be presented to the prospective purchasers without compensation on condition that they give their opinions concerning the merits thereof, until and unless said representations are true, and not in any instance when a prospective purchaser as a condition precedent to availing himself of such free offer is required to purchase a so-called loose-leaf extension service, or supplemental service, purporting to keep said set up to date, or is required to purchase for a consideration any other article or thing;
- (b) Representing to the public or to prospective purchasers in various communities that in each community a limited number of persons will be sold a book or set at a specially reduced price as an introductory offer for advertising, unless or until such representation is true, and not in any instance in which the price represented as the regular selling price is an exaggerated sum and in excess of the usual price, nor when the specially reduced price is equal to, or approximately equal to the usual customary selling price of the books; and
- (c) Representing to the public or prospective purchasers that a book or set of books being offered has been recommended or endorsed by various State or county superintendents of schools, or by principals of various State teachers' colleges, or by any of them, when such is not the fact.

Mr. Martin A. Morrison for the Commission.

Lowry, Beggs & Dawson, of Madison, Wis., for respondents.

COMPLAINT ¹

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 Irving Roy Jacobson and Progressive Education Society, Inc., 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 Irving Roy Jacobson, with his principal office and place of business at 407 Hillington Way, in the city of

¹Amended.

Complaint

Madison, State of Wisconsin, has been engaged for more than two years last past in the sale and distribution in interstate commerce of a certain set of books under the title "Source Book", together with a loose-leaf extension service thereto.

On the 5th day of January 1932 said respondent, Irving Roy Jacobson, as an aid to his said business and as an instrumentality to be used in the transaction of said business, caused to be incorporated under the laws of the State of Wisconsin respondent Progressive Education Society, Inc. Respondent Irving Roy Jacobson became president of said corporation at the date of its organization and has remained such president continuously since that date. At said date of the organization of said respondent corporation, said business began to be and has continuously been transacted by said corporation. During all said time respondent Irving Roy Jacobson has controlled and directed said business, and said business has in such manner been, and is carried on by the respondents herein at the office and place of business above described.

Respondents have during all said time carried on, and do carry on, said business as next hereinafter described. Respondents purchase the said "Source Book" and loose-leaf extension service from the publisher thereof, Perpetual Encyclopedia Corporation, with offices in the city of Chicago, State of Illinois, and sell said set of books through agents, salesmen, and employees to purchasers located at points in the various States of the United States, and the District of Columbia, and have caused and do cause said books, or publications, when so sold, to be transported from the city of Chicago, State of Illinois, or from the city of Madison, State of Wisconsin, through and into other States of the United States, and the District of Columbia, to the purchasers thereof at their respective locations. In the course and conduct of their said business, said respondents have been and are now in competition with various other persons, partnerships, and corporations engaged in the sale and distribution of books of reference, and other competitive books and publications in interstate commerce.

PAR. 2. Respondents have sold and do now sell said "Source Book" 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 set of books and the extension service. Said agents, representatives, and salesmen have been and are paid a commission for each sale they make. During the summer vacation period college students are employed as salesmen, who are instructed in the methods of selling said publications. The

method of sale is to require the purchaser to sign an order blank for said "Source Book" and the supplemental service, 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 office of respondent Progressive Education Society, Inc., aforesaid, in Madison, Wis., and the set of books is thereupon shipped to the purchasers thereof either from Madison, Wis., or by the publisher from Chicago, Ill. In some instances delivery of the set of books is made by the salesman sometime subsequent to the time of taking the order.

PAR. 3. In the course and conduct of said business, respondents, through themselves, their agents, representatives, and salesmen, have represented, and they do now so represent, to prospective purchasers, that a set of the said "Source Book" will be presented free of charge to said prospective purchasers, upon condition that said prospective purchasers will give other prospective purchasers in the community their opinions concerning the merits of said set of books. As a condition precedent to availing themselves of the free offer such prospective purchasers are required to subscribe to a so-called loose-leaf extension service or supplemental service, purporting to keep the set of books up to date. Said loose-leaf extension service is to be furnished twice a year for ten years.

Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, that the purchaser pays only for the extension service at the rate of \$6.95 per year for ten years, or a total of \$69.50, which sum pays for the said service for a period of ten years. The aforesaid representations made by respondents, their agents, representatives, and salesmen, are false and misleading in that the said set of books are not presented to the purchaser free, because the price of \$69.50 for the loose-leaf extension service is greatly in excess of the price at which such service can be furnished to bona fide purchasers, and is sufficient to, and is intended to and does in fact, compensate the seller or sellers for the set of books so delivered to the purchasers thereof, together with the accompanying extension service.

Purchasers are not permitted to pay for the said extension service at the rate of \$6.95 per year for ten years, but are required to pay the total sum of \$69.50 in monthly installments within one year from the date of the signing of the order blank. 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 and the extension service for the sum of \$69.50, under the mistaken belief that

he is receiving the said set of books free of charge, and is paying only for the extension service.

PAR. 4. Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, to prospective purchasers in various communities that in said communities a limited number of persons will be sold the set of books at a special reduced price as an introductory offer for purposes of advertising, and that the usual and customary price of said set of books, and extension service, are certain fictitious and grossly exaggerated prices, far exceeding the usual and customary prices at which respondents actually offered or expected to sell the same, and greatly in excess of the real value of the same. The fact is that said representations are false and misleading because \$69.50 is the regular and customary selling price of said set of books, and extension service, and respondents have never sold such set of books and extension service for a greater price than \$69.50, to any person who can be induced to purchase same.

PAR. 5. Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, to prospective purchasers that the "Source Book" and the extension service have been recommended and endorsed by various State and county superintendents of schools, and by principals of various State teachers' colleges. Said representations are false, deceptive, and misleading because said set of books and extension service have not been recommended and endorsed by said superintendents of schools and principals of State teachers' colleges, and such false representations were and are made in order to deceive prospective purchasers of said set of books, and extension service, many of whom were school teachers, and cause them to purchase said publication in the mistaken belief that it was a publication approved by their school authorities.

PAR. 6. Respondents, their agents, representatives, and salesmen, by means of the false, deceptive, and misleading statements and representations set forth above, have sold and now sell said set of books, "Source Book" 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.

All of the aforesaid false, deceptive, and misleading statements and representations used by said respondents are calculated to and do have the tendency and capacity to unfairly divert trade to respondents from competitors who do not use such false, deceptive, and misleading statements and representations in the sale of their publi-

Order

19 F. T. C.

cations, and to induce the public to purchase said books and publications under and because of the mistaken belief that said representations are true.

PAR. 7. The above alleged acts, things, and practices of respondents have been and are, as aforesaid, 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

This proceeding came on to be heard upon the amended complaint issued herein against, and duly served upon, the above-named respondents, to wit: Irving Roy Jacobson and Progressive Education Society, a corporation, and upon the answer filed by said respondents to said amended complaint, said answer (omitting the formal parts thereof and signatures thereto) being in the following words, to wit:

CONSENT ANSWER

An amended complaint having been issued by the Federal Trade Commission against, and having been served upon, the undersigned as respondents thereto;

And we, Irving Roy Jacobson and Progressive Education Society, a corporation, respondents thereto, having duly considered the same and being desirous of saving the labor and expense of forming issues upon said complaint, taking evidence thereon and conducting adversary proceedings thereon to a final determination of such proceeding;

And we, said respondents, having decided to file a consent answer to said complaint under the rules of said Commission, for our answer to said amended complaint, do say:

We, Irving Roy Jacobson and Progressive Education Society, a corporation, respondents herein, hereby consent that the Federal Trade Commission may make, enter and serve upon us as such respondents an order to cease and desist from the violations of the law alleged in said amended complaint, without issues formed, trial had, or any other intervening proceedings herein.

And now the Commission having considered said amended complaint and said answer thereto, and being fully advised in the premises:

It is ordered, That in connection with or in aid of offering for sale or selling the certain articles of merchandise hereinafter mentioned in commerce between and among the several States of the United States and the District of Columbia, or within the District of Columbia, respondent Irving Roy Jacobson and respondent Progressive Education Society, Inc., a corporation, their officers, agents, employees, and representatives do cease and desist—

(1) From representing to the public or to prospective purchasers that a certain set of books known and designated as "Source Book", or any other book or set of books, will be presented to such prospective purchasers or any of them, without other compensation, on condition that said prospective purchasers will give other prospective purchasers in the community their opinions concerning the merits of said book or set of books, until and unless said representation is true; and not in any instance in which such prospective purchaser as a condition precedent to availing himself of such free offer is required to purchase a so-called loose-leaf extension service, or supplemental service, purporting to keep said set of books up to date, or is required to purchase for a consideration any other article or thing.

(2) From representing to the public or to prospective purchasers in various communities that in each said community a limited number of persons will be sold a book or set of books at a special reduced price as an introductory offer for the purpose of advertising, unless and until said representation is true; and not in any instance in which the price represented to such prospective purchaser to be the regular or usual selling price of said book or set of books is an exaggerated sum and in excess of the usual and customary selling price of said book or books; nor in any instance in which such so-called special reduced price is equal to, or approximately equal to, the usual and customary selling price of said book or books.

(3) From representing to the public or to prospective purchasers that a book or set of books being offered for sale to the public or to prospective purchasers, has been recommended or endorsed by various State and county superintendents of schools, or by principals of various State teachers' colleges, or by any of them, unless and until said representations are true.

It is further ordered, That respondents file with the Federal Trade Commission at its office in Washington, D. C., within 60 days from and after the service of this order upon them, a report in writing setting forth in detail the manner and form of their several compliances with the provisions of this order.

Complaint

19 F. T. C.

IN THE MATTER OF

**FRANK BRILLIANT, MORRIS R. BRILLIANT AND HARRY
K. BRILLIANT, TRADING AS BRILLIANT BROTHERS
COMPANY****COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914***Docket 2222. Complaint, Aug. 16, 1934—Order, Sept. 24, 1934*

Consent order requiring respondents, in connection with the sale of their products in interstate commerce, and solicitation thereof, to cease and desist from directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name of, or with any word or words, or in any way as a trade name, brand, or designation for, their products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Mr. Morton Nesmith for the Commission.

Mr. Maurice Tobey, of Boston, Mass., for respondents.

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 Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, hereinafter referred to as respondents, have been or are 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant are trading and doing business as Brilliant Brothers Company, respondents herein, and their principal place of business is located at 182 Lincoln Street, Boston, Mass. Said respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, are now and for many years last past have been engaged in the business of selling shoes at wholesale between and among the different States of the United States.

PAR. 2. The respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their products in interstate commerce, caused and still cause the words—

Combination Last (Trade Mark) Steel Support

Dr. Thomas

Reg. U. S. Pat. Off.

Arch

Comfort Health

to be stamped on or across the sole of a certain brand of the shoe sold by them in interstate commerce.

Said respondents also caused and still causes said shoes to be packed and shipped in cartons or boxes on which these same identical words appear.

Said respondents caused and still cause a label to be affixed to another brand of its shoes on which appear the words

DR. DAVIS

RESTFORM HEALTH SHOE

STEEL ARCH

Said respondents have caused and still cause still another of their brand of shoes to be packed and shipped in cartons or boxes on which the following words are conspicuously displayed:

DR. WEBSTER

WALK WITH EASE

GENUINE GOODYEAR WELT

SOLES THAT WEAR

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised and sold, as described in paragraph 2, were not made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes had been fashioned or designed by doctors or others with a knowledge of orthopedics or at least had some feature or features not common to the ordinary run of footwear, which fea-

Order

19 F. T. C.

ture or features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom.

PAR. 4. The respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in the sale of their said products as aforesaid, ships and delivers to their jobber and retail customers their products so labeled and branded and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondents, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products or in its advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the 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

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission and respondents' answer thereto, that they waive hearing on the charges set forth in the complaint, refrain from contesting the proceeding and pursuant to Rule III of the Commission's Rules of Practice, as amended and revised to August 20, 1934, consent that the Commission may make, enter, and serve upon respondents, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods

of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in connection with soliciting the sale of, and selling their products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.," in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, or designation for their products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That respondents Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, shall, within 60 days after the service upon them of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist, hereinabove set forth.

IN THE MATTER OF
GRAYBAN, INCORPORATED

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

Docket 2200. Complaint, June 20, 1934—Order, Sept. 26, 1934

Consent order requiring respondent, its officers, etc., in connection with the sale or distribution in interstate commerce or in the District of Columbia or in any territory, of the hair dye or hair-coloring product sold by it under the designation "Grayban", or any such preparation of substantially the same composition, to cease and desist from the use of any such representations, statements or assertions, through advertisements or otherwise, to the effect that—

- (a) Any such product or preparation can or will bring back the natural color of growing hair and the hair's own original or natural color, or can or will renew its color or bring back the healthful beauty of the hair, "except in phraseology which clearly does not imply that such product can or will restore health to the hair or user";
- (b) The color imparted thereby is permanent, unless qualified to show clearly that it acts only on the exposed portions of the hair to which applied and that further and successive applications are necessary to color new growth as it emerges, and to intensify or increase the color of those portions of the hair to which it has previously been applied;
- (c) Its action, when applied, constitutes a natural process, or it is a miracle or is miraculous in its action, and is not a dye;
- (d) It will banish gray hair, except in words which clearly do not imply that it can or will cure or prevent the graying of hair or further growth of gray hair, but show that successive reapplications are necessary from time to time, as hereinbefore set forth;
- (e) Successful or satisfactory coloring of the hair by the application thereof is certain, except in words which show clearly that results from the use thereof vary and that all users do not achieve uniformly satisfactory results in the use thereof; and
- (f) It is sold or distributed under or with a so-called money-black or other guarantee, unless and until in conjunction therewith there is set forth clearly and unequivocally the full terms and conditions of any such guarantee and such terms and conditions are adhered to and complied with by respondent.

Mr. Henry Miller 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 Grayban, 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

Complaint

be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Grayban, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the City and State of New York. It is and for more than one year last past has been engaged in the business of manufacturing, selling and distributing, to dealers, users, and consumers throughout the United States, a product or preparation for use in the treating, coloring, or dyeing of the hair of men and women, and named and designated by respondent as "Grayban." In the course and conduct of said business, respondent causes the said product or preparation, as and when sold, to be shipped and transported in commerce from its place of business in the State of New York into other States of the United States, the Territories and the District of Columbia, to the respective purchasers thereof in such other States, Territories, and District. There are and, at all times herein mentioned, have been various and sundry other persons, firms, partnerships and corporations engaged in the business of selling and distributing hair dye and hair-coloring products, which are competitive to respondent's said product or preparation, to dealers, users and consumers in commerce in, between and among the several States and Territories of the United States and the District of Columbia. In the sale and distribution of its said product or preparation, respondent has been for more than one year last past, and still is, engaged in "commerce" as defined in said act and in direct active and substantial competition with such other persons, firms, partnerships and corporations.

PAR. 2. In the sale and distribution of its said product or preparation called "Grayban" respondent causes the same to be advertised, offered for sale and sold to the purchasing public through and by means of trade promotional advertisements and representations in the form of—

(a) Advertisements published in magazines, newspapers, and other periodicals having circulation among the purchasing public throughout the United States and in various sections thereof; and

(b) Advertising pamphlets, leaflets, circulars, letters, and other forms of written and oral representations.

Said trade promotional advertisements and representations are and have been published and circulated among the purchasing public by respondent for the purpose of thereby inducing and causing the public to purchase and use said product or preparation. In the course and conduct of said business respondent has adopted and for more than one year last past has pursued and continues to pursue

Complaint

19 F. T. C.

the practice of causing said product or preparation designated "Grayban" to be advertised, offered for sale and sold to the public upon various and sundry representations, statements and assertions set forth in said trade promotional advertisements and representations to the effect:

(a) That said product or preparation, "Grayban" can and will bring back the natural color to gray hair and the hair's own true color;

(b) That said product or preparation can and will renew the color of the hair;

(c) That said product or preparation can and will bring back the healthful beauty and original or natural color of the hair;

(d) That the color imparted by said product or preparation in the use thereof is permanent;

(e) That the action of said product or preparation when applied to the hair is a natural process;

(f) That said product or preparation is the miracle of science;

(g) That said product or preparation is not a dye;

(h) That said product or preparation when applied to the hair will banish gray hair;

(i) That the successful and satisfactory coloring of the hair by the application of said product or preparation is certain;

(j) That said product is sold with a so-called money-back guarantee under which purchasers may secure from respondent the return of purchase money spent for said product when desired and without qualifications or conditions.

PAR. 3. The said representations, statements, and assertions described in paragraph 2 hereof are and have been false, misleading, and deceptive in that said product or preparation called "Grayban" cannot and will not accomplish the results claimed therefor in said representations, and it is not the type or kind of product or preparation claimed in said representations; and said so-called money-back guarantee is not in truth followed or acted upon by respondent as such unqualified or unconditional guarantee. The use by respondent of said representations, statements, and assertions was and is calculated to mislead and deceive, and has and had the capacity, tendency and effect of misleading and deceiving, the purchasing public into the erroneous belief that said representations, statements, and assertions were and are true in fact and into purchasing or using said product in such erroneous belief.

PAR. 4. Respondent's use of the false, misleading, and deceptive representations, acts, and practices as hereinabove alleged are methods of competition which are unfair and 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 to hamper, burden, or restrain the freedom of fair and legitimate competition in the hair dye and hair coloring industry and trade.

PAR. 5. The said false, misleading, and deceptive representations, acts, and practices used by respondent as hereinabove described, constitute unfair methods of competition in commerce, in violation of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under 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 respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter and serve upon respondent without a trial, without evidence and without findings as to facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That in the course of or in connection with the sale or distribution, in interstate commerce or in the District of Columbia or in any territory of the United States, of the hair dye or hair-coloring product heretofore sold by respondent under the designation "Grayban" or of any other hair-coloring product of substantially the same composition, the respondent Grayban, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly using or causing to be used any representations, statements, or assertions, in advertisements, trade promotional literature, or in any other manner whatsoever, to the effect—

(a) That any such product or preparation can or will bring back the natural color of gray hair and the hair's own true color.

(b) That any such product or preparation can or will renew the color of the hair.

(c) That any such product or preparation can or will bring back the original or natural color of the hair.

(d) That any such product or preparation can or will bring back the healthful beauty of the hair, except in phraseology which clearly does not imply that such product can or will restore health to the hair or user.

(e) That the color imparted by any such product or preparation in the use thereof is permanent, except when qualified so as to clearly show that said product acts only upon the exposed portions of the hair to which it is applied and that further and successive applications thereof are necessary to color the new growth of hair as it emerges from the scalp and to intensify or increase the color of such portions of the hair to which the product has previously been applied.

(f) That the action of any such product or preparation when applied to the hair is a natural process.

(g) That any such product or preparation is a miracle or is miraculous in its action.

(h) That any such product or preparation is not a dye.

(i) That any such product or preparation when applied to the hair will banish gray hair, except in phraseology which clearly does not imply that such product or preparation can or will cure or prevent the graying of the hair or the growth or further production of gray hair, but which shows that successive reapplications of the product are necessary from time to time for the treatment of the newly grown parts of the hair above the scalp.

(j) That the successful or satisfactory coloring of the hair by the application of any such product or preparation is certain, except in phraseology which qualifies and shows clearly that results from the use of such product or preparation vary and that all users do not achieve uniformly satisfactory results in the use of such product or preparation.

(k) That any such product or preparation is sold or distributed under or with a so-called money-back guarantee, or other guarantee, unless and until in conjunction therewith there is set forth clearly and unequivocally the full terms and conditions of any such guarantee and such terms and conditions are adhered to and complied with by respondent.

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

Complaint

IN THE MATTER OF
FOX SHOE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2220. Complaint, Aug. 15, 1934—Order, Sept. 26, 1934*

Consent order requiring respondent, in connection with the sale of its products in interstate commerce, and the solicitation thereof, to cease and desist from directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name of, or with any word or words, or in any way as a trade name, brand or designation for, its products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

Mr. Morton Nesmith 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 Fox Shoe Company, hereinafter referred to as respondent, 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Fox Shoe Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at 64 North Fourth Street, Philadelphia, Pa. Said respondent is now and since its incorporation in, to wit, 1930, has been engaged in the sale of shoes, being a wholesaler thereof between and among the different States of the United States. It has sold, and has caused and still causes, the said articles in which it deals, to be transported from its said place of business into and through other States of the United States to various jobbers and retailers located at points in different States of the United States. In the course and conduct of its said

Complaint

19 F. T. C.

business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Fox Shoe Company, in the course of the conduct of its business as aforesaid, in soliciting the sale of and selling its products in interstate commerce, caused and still causes the words "Dr. Fox" to be stamped on or across the sole of a certain brand of the shoes sold by it in interstate commerce. Said respondent also caused and still causes said shoes to be packed and shipped in cartons or boxes on which the words "Dr. Fox's Nature Shape (said words 'Nature Shape' branded on the outline of a foot pictured immediately under the words 'Dr. Fox')", are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold, as described in paragraph 2, were not made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes had been fashioned or designed by doctors or others with a knowledge of orthopedics or at least had some feature or features not common to the ordinary run of footwear, which features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom.

PAR. 4. The respondent, Fox Shoe Company, in the sale of its said products as aforesaid, ships and delivers to its jobber and retail customers its products so labeled and branded and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondent, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms, and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the

abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products or in its advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the 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

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission and respondent's answer thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to Rule III of the Commission's Rules of Practice, as amended and revised to August 20, 1934, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondent, Fox Shoe Company, a corporation, in connection with soliciting the sale of, and selling its products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, or designation for its products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That respondent Fox Shoe Company, a corporation, shall, within 60 days after the service upon it of a copy

Memoranda

19 F. T. C.

of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist, hereinabove set forth.

MEMORANDA

The Commission also made three other similar consent orders, in three other proceedings which also involved the unwarranted use of the word "Doctor", etc., as hereinabove set forth, and in which Mr. Morton Nesmith appeared for the Commission, following substantially similar complaints, as noted below:

P. TRACHTENBERG, trading as HILL SHOE Co. Docket 2219. Complaint, August 15, 1934. Order, October 5, 1934.

Respondent, trading as aforesaid, with principal place of business in Philadelphia, and engaged in sale of shoes at wholesale to various jobbers and retailers in different States, in the course of the conduct of his said business, in soliciting the sale of and selling his said shoes in interstate commerce, which shoes were not "made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", causes a label to be affixed to said shoes on which appears the words "Dr. CHAPMAN'S Reg. U. S. Pat. Off. HEALTH SHOES NATURE'S LAST."

Said respondent also caused and still causes said shoes to be packed and shipped in cartons on which appear the words "Dr. CHAPMAN'S Reg. U. S. PAT. OFF. HEALTH SHOES NATURE'S LAST Copyright 1931—Hill Shoe Co. Philadelphia, Pa.", together with the words, "See for yourself why Dr. Chapman's Health Shoes will keep growing feet healthy . . . These shoes are constructed with the finest materials obtainable and are made on Nature's Form-Fitting Lasts. Hill Shoe Company, Distributors."

Said respondent further caused certain business cards to be printed on which appeared the following words "HILL SHOE COMPANY Wholesale Shoes Distributors of Dr. Chapman's Shoes."

ABRAHAM SCHWARTZ ET AL., trading as A. SCHWARTZ & SONS. Docket 2224. Complaint, August 17, 1934. Order, October 6, 1934.

Respondents, trading as aforesaid, with principal place of business in Philadelphia, and engaged in the sale, but not manufacture, of shoes at wholesale to various jobbers and retailers in different States,

in the course and conduct of said business, in soliciting the sale of and selling their shoes in interstate commerce, which were not made in accordance with the design "and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", caused and still cause certain of their shoe products to be packed in boxes or cartons on the outer surfaces of which appeared in part "Dr. Allen's Golden Eagle FUT FITTERS Scientifically Designed For Growing Feet", which products, so represented, designated and labeled, said respondents sold and shipped or distributed in interstate commerce.

Said respondents further caused and still cause certain of their stationery or letterheads to be distributed in interstate commerce and wherein there appeared as the heading thereof, "A. Schwartz & Sons Modern Footwear Manufacturing Wholesalers", etc.¹

BLEECKER SHOE Co., INC. Docket 2221. Complaint August 15, 1934. Order, October 20, 1934.

Respondent, with principal place of business in New York City, engaged in the sale of shoes at wholesale to various jobbers and retailers in different States, in soliciting the sale of and selling its said shoes in interstate commerce, which shoes were not made in "accordance with the design and/or under the supervision of a doctor and did not contain special, scientific or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", caused and still causes certain of its shoes to be packed and shipped in cartons or boxed on which appear the words "We Recommend Dr. Miles Health Shoes."

Said respondent causes and still causes said advertising matter such as catalogs and display cards to be furnished to its retail trade upon which appear the words "Dr. Miles Health Shoes", some of said advertising carrying pictures of "Dr. Miles" shoes and the following description "Scientific Foot Comfort Shoes At Mill-End Savings. Famous Dr. Miles Health Shoes."

Said respondent further caused or causes certain other of its shoes to be packed and shipped in cartons or boxes upon which appear the following words "Orthopedic Dr. Miles Health Shoes Reg. U. S. Pat. Off."

¹ Order did not cover this part of the charge.

IN THE MATTER OF

B. M. ROSS

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

Docket 2078. Complaint, Feb. 23, 1933—Decision, Oct. 23, 1934

Where an individual, engaged in the shipping and sale, by mail, of twenty so-called "prescription courses" consisting of one, two, three or four ingredients as the case might be, as treatments for specified ailments and afflictions, represented in its booklet "Tested Prescription", sent in response to advertisements in newspapers and periodicals of nation-wide circulation, and pamphlets and circular letters inviting the reader to send for "free book of tested prescriptions on nervous and chronic diseases by a specialist of over 30 years of practice and experience", "used successfully in thousands of cases by said specialist", that said "courses" were all approved, tested, harmless, scientifically indicated, effective, and complete treatments and cures for kidney and bladder troubles, diseases of women, rheumatism, venereal diseases, and numerous other conditions and afflictions, some of the symptoms of which it there described, and invited the prospect to order by identifying number the particular course listed for the ailment he thought he had, with or without competent medical advice or other means of knowledge;

The facts being that none of them constituted a complete, proper, effective, or safe treatment for any of said afflictions and conditions in any and all persons and in any and every case, but might be helpful, harmful, or useless, depending on the varying and unknown physical condition of the individual purchaser and user, who could not know without competent medical examination, advice, and supervision, whether in his case the particular course would be helpful, harmful, or useless, and that in some instances a course which was not beneficial might be potentially harmful in lulling the customer into a false sense of security and thereby delaying the obtaining of proper and adequate treatment;

With capacity and tendency to confuse, mislead, and deceive members of the public into the belief that said courses constituted cures, remedies or competent and adequate treatments for the various afflictions and conditions for which variously recommended, as aforesaid, and that they would give relief in all such cases to all purchasers when bought and used as directed, and to induce members of the public to buy and use said medicines because of such erroneous beliefs thus engendered, and thereby divert trade to it from competitors engaged in sale of similar preparations, and of those intended for the treatment of the aforesaid various ailments and conditions, and from competitors engaged as manufacturing chemists in sale and distribution of substantially similar, and of identical proprietary medicines which they had long made and sold, and the advertisement of which was limited by most of them to a correct statement of the medicines' therapeutic effects; to the substantial injury and prejudice of competitors who do not misrepresent the effects of their products, and to the injury of the public:

¹ Amended.

Complaint

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. Henry C. Lank for the Commission.

Mr. Marshall Solberg, of Chicago, Ill., for respondent.

COMPLAINT ²

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that B. M. Ross, 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 B. M. Ross, is an individual with his principal place of business located in the city of Chicago, State of Illinois. Respondent for several years last past has been engaged in the practice of medicine and in the business of selling and distributing medicines and drugs for the alleged relief of blood disorders, weakness, nervous diseases, urinary diseases, and venereal diseases. Respondent sells the said medicines and drugs to purchasers thereof located in the various States of the United States and causes said medicines and drugs when so sold to be transported from his place of business in the city of Chicago, State of Illinois, through and into other States of the United States to purchasers thereof at their respective points of location. In the course and conduct of his business as aforesaid, respondent is in competition with other individuals, corporations, and partnerships engaged in the sale and distribution in interstate commerce of medicines and drugs in competition with those of respondent.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, the respondent has been and is now soliciting the sale of and selling his said medicines and drugs by means of advertisements inserted in various publications having circulation in interstate commerce and by pamphlets and circular letters. In said advertisements, pamphlets, and circulars, respondent represents or

² Amended.

Complaint

19 F. T. C.

so words the same as to imply that his said medicines are an effective remedy for or beneficial in the treatment of—

* * * syphilis, gonorrhoea, gleet, pollutions, chancroids, masturbation, venereal warts, stricture, kidney and bladder troubles, spermatorrhea, impotence, prostatic trouble, leucorrhoea, amenorrhoea, dysmenorrhoea, menorrhagia, rheumatism, nervous debility, diabetes, anemia, high blood pressure, eczema, psoriasis, acne, sterility and bed wetting.

While in truth and in fact a few of the drugs included 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 it is false and misleading to allege or represent or to imply that the said medicines or drugs will provide adequate treatment for the above-mentioned diseases or ailments.

PAR. 3. In the course and conduct of his business as described in paragraphs 1 and 2 hereof, the respondent has been and is now soliciting the sale of and selling his medicines and drugs by means of advertisements inserted in various publications having circulation in interstate commerce. In said advertisements, the respondent causes various statements and representations to be made that respondent will send to anyone requesting it a "Free Book of Tested Prescriptions." Typical of such advertisements is that appearing in the "Household Journal" for December 1930, which is as follows:

Blood disorders, weakness, nervous, urinary and chronic diseases. Men and women send for free book of tested prescriptions used successfully in thousands of cases by a specialist of over thirty years of practical experience. Write to Dr. B. M. Ross, 35 S. Dearborn St., Room 573, Chicago.

The representations and statements made by the respondent, as hereinabove mentioned, that he will send to men and women suffering from blood disorders, weakness, nervous, urinary, and chronic diseases, a free book of tested prescriptions represented as having been used successfully in thousands of cases by a specialist of over thirty years of practical experience, are false and misleading because (1) in truth and in fact respondent does not and has not furnished a free book of tested prescriptions for the treatment of any diseases or ailments, but has furnished and does furnish free a book not containing prescriptions but containing offers to sell to persons suffering from such ailments, for prices stated in such book, medicines and drugs for the purported treatment and cure of various diseases and ailments mentioned in said book, and because (2) such representations and statements are made by respondent for the purpose of promoting and advancing the sale by him of drugs and medicines to persons who, suffering from any of such diseases and ailments, write to respondent in the expectation that they will receive from him a book of free prescriptions for the treatment of such diseases and ailments. The aforesaid statements and representations by the respondent

ent have been and are made with the intent and for the purpose of promoting and advancing the sale by him of drugs and medicines by inducing persons suffering from the diseases and ailments mentioned and who write to the respondent in the expectation that by sending for such book they will receive free prescriptions for the treatment and cure of their ailments, to purchase drugs and medicines from respondent for the treatment of the above named ailments and diseases.

PAR. 4. The use by respondent of the false, misleading, and deceptive advertisements and representations, as hereinabove referred to, constitute practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the sale of medicines and drugs in interstate commerce.

PAR. 5. Said false, misleading, and deceptive acts, practices, and methods of respondent, under the circumstances and conditions hereinabove alleged, are unlawful and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", 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 and served an amended complaint upon the respondent, B. M. Ross, 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 evidence before an examiner of the Commission. Evidence was adduced in support of the charges of the complaint. No evidence was offered by the respondent.

Thereupon, this proceeding came on for hearing on the briefs of counsel for the Commission and for the respondent, and upon the record. The Commission, now having considered the matter 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, B. M. Ross, is an individual, with his principal office and place of business in Chicago, Ill. He is, and for several years last past has been engaged in the business of selling and distributing medicines and drugs for the alleged treatment of certain diseases of the human body. He has conducted this medicine and drug selling business for several years by a mail order method in which he advertised for customers in various newspapers and in various magazines and periodicals having a nation-wide circulation, and by means of pamphlets and circular letters. When orders are received respondent sends the particular medicine or drugs by mail from his principal place of business in the city of Chicago in the State of Illinois into and through the several States of the United States and the District of Columbia to the customers ordering the same at their respective points of location in the several States of the United States.

PAR. 2. Respondent sends to prospective customers answering his several advertisements a booklet prepared by him and entitled "Tested Prescription." Prospective customers are directed to send for this booklet in the advertisements of respondent appearing as aforesaid in magazines and periodicals of nation-wide circulation. Examples of such advertisements are:

Write for free book of tested prescriptions on nervous and chronic diseases by a specialist of over 30 years of practical experience.

Dr. B. M. Ross, 35 S. Dearborn St.,
Room 595, Chicago, Ill.

Blood disorders, weakness, nervous, urinary and chronic diseases, men and women send for free book of tested prescriptions used successfully in thousands of cases by a specialist of over thirty years of practical experience.

Write to Dr. B. M. Ross, 35 S. Dearborn St.,
Room 591, Chicago, Ill.

This booklet did not contain any prescriptions for medicines or drugs but described some of the symptoms of the following diseases, ailments or habits: anemia or poor blood, bad blood, gonorrhoea, gleet or chronic gonorrhoea, syphilis, kidney and bladder troubles, diseases of women, sterility, rheumatism, diabetes, acne, psoriasis, eczema, nervousness or nervous debility, masturbation or self-abuse, pollutions or night losses, prostatic trouble, impotence or sexual weakness commonly called "lost manhood", spermatorrhea, high blood pressure. The prospective customer is therein invited to order by number the prescription course respondent has listed for the disease, ailment or habit that each such prospective purchaser, with or without competent medical advice, or other means of knowledge, thinks he has.

Respondent in and by his said booklet either expressly or by implication represents to the purchasing public and to each purchaser and user of said prescription course of medicines and drugs that each of said prescription courses is an approved, tested, safe, harmless, scientifically indicated, effective, and complete treatment and cure for the particular disease, ailment or habit for the treatment or cure of which the same is indicated and offered in said booklet.

PAR. 3. The respondent does not send to his customers written prescriptions but sells to such customers prepared medicines which he refers to as Prescription Courses. The prescription courses sold and distributed by respondent as aforesaid consist of 1, 2, 3, or 4 prepared medicines or drugs. Said courses are given certain numbers and are sold as a treatment for certain specified diseases. The medicines and drugs and the diseases, ailments or habits for which respondent sells them as a treatment are as follows:

PRESCRIPTION COURSE #200

FOR SYPHILIS

Prescription #20:

| | |
|------------------------------------|------------|
| Rx. Extr. Red Clover Blossoms..... | ½ grain. |
| Extr. Stillingia..... | ¼ grain. |
| Extr. Xanthoxylum..... | ¼ grain. |
| Extr. Lappa..... | ¼ grain. |
| Extr. Phytolacca..... | ¼ grain. |
| Extr. Blue Flag..... | ¼ grain. |
| Extr. Nux Vomica..... | ¼s grain. |
| Extr. Echinacea..... | 1½ grains. |

Directions: Take one tablet after each meal with half a glass of water.

MIXED TREATMENT (UPJOHN)

Prescription #27:

| | |
|---------------------------|-----------|
| Rx. Potassium Iodide..... | 2 grains. |
| Syrup Ferrous Iodide..... | 5 min. |
| Mercuric Chloride..... | ¼s grain. |
| Donovan Solution..... | 2 min. |
| Tr. Nux Vomica..... | 2 min. |

Directions: Take one pill three times daily during meals.

Prescription #37:

| | |
|--------------------------------|------------|
| Rx. Tr. Berberis Lloyd's..... | 2 ounces. |
| Glycerine..... | 2 ounces. |
| Alcohol..... | 1 ounce. |
| Essence of Pepsin ad q. s..... | 16 ounces. |

Directions: Take one teaspoonful with little water three times a day after each meal. **SHAKE BOTTLE BEFORE USING.**

Prescription #38:

| | |
|-----------------------------|-----------|
| Rx. Potassium Chlorate..... | 5 grains. |
|-----------------------------|-----------|

Direction: Dissolve slowly one tablet in the mouth every two hours.

Prescription #8:

| | |
|----------------------------------------------------------------------------|--|
| Rx. Concentrated Diastasis Malt with Cod Liver Oil (John Wyeth & Bros.) | |
|----------------------------------------------------------------------------|--|

Directions: One Teaspoonful with a glass of milk three times a day.

Prescription #10:

| | |
|---------------------------------|----------------|
| Rx. Calcium Phosphate, 8 x..... | 3 grains each. |
| (Calcareas Phos.) | |
| (P. H. Mallen & Co.) | |

Directions: 2 tablets three times per day before each meal.

Findings

19 F. T. C.

PRESCRIPTION COURSE #200—Continued

MIXED TREATMENT—continued

Prescription #12:

| | |
|---------------------------------|-------------|
| Rx. Berberis (Lloyd's)..... | 2 ounces. |
| Iron (Lloyd's)..... | 1½ ounces.. |
| Fowler Solution..... | 2 drams. |
| Glycerine..... | 2 ounces. |
| Alcohol..... | 1 ounce. |
| Essence of Pepsin q. s. ad..... | 16 ounces.. |

Directions: One teaspoonful after each meal.

PRESCRIPTION COURSE #120

FOR BAD BLOOD

(Not due to syphilis)

Prescription #11:

| | |
|---------------------------------|------------|
| Rx. Stillingia (Lloyd's)..... | 1 ounce. |
| Berberis (Lloyd's)..... | 2 ounces. |
| Iron (Lloyd's)..... | 12 drams. |
| Fowler's Solution..... | 2 drams. |
| Glycerine..... | 2 ounces. |
| Alcohol..... | 1 ounce. |
| Essence of Pepsin q. s. ad..... | 16 ounces. |

Directions: One teaspoonful three times a day in water after each meal.

Prescription #9:

| | |
|---------------------------|-----------|
| Rx. Calcium Sulphide..... | ¼ grain.. |
|---------------------------|-----------|

Directions: Take one three times a day during meals.

Prescription #20:

| | |
|-----------------------------------|-------------|
| Rx. Extr. Red Clover Blossom..... | ¼ grain.. |
| Extr. Stillingia..... | ½ grain. |
| Extr. Xanthoxylum..... | ½ grain. |
| Extr. Lappa..... | ½ grain. |
| Extr. Phytolacca..... | ¼ grain. |
| Extr. Blue Flag..... | ¼ grain. |
| Extr. Nux Vomica..... | ¼s grain. |
| Extr. Echinacea..... | 1¼ grains.. |

Directions: Take one tablet after each meal with half glass of water.

PRESCRIPTION COURSE #600

FOR SPERMATORRHEA

Prescription #56:

| | |
|--------------------------|-------------|
| Rx. Tr. Salix Nigra..... | 4 ounces. |
| Tr. Avena..... | 4 drams. |
| Tr. Staphisagria..... | 4 drams. |
| Glycerine..... | 1 ounce. |
| Essence Pepsin q. s..... | 16 ounces.. |

Directions: Take one teaspoonful in water three times a day before meals.

Prescription #57 (Sugar coated, yellow tablets):

| | |
|--------------------------------|--------------|
| Rx. Lupulin Concentrated..... | ½ grain. |
| Scutellarin Concentration..... | ½ grain. |
| Ergotin (Bonjean)..... | ¼ grain. |
| Cimicifugin Concentration..... | ¼ grain. |
| Hyoscyamine Sulphate..... | ¼ooo grain.. |
| Zinc Bromide..... | ¼o grain. |

Directions: Take two capsules after each meal.

PRESCRIPTION COURSE #650

FOR IMPOTENCE

Prescription #17:

| | |
|-------------------------------|------------|
| Rx. Powder Cantharides..... | ½s grain.. |
| Extr. Nux Vomica..... | ¼ grain. |
| Zinc Phosphide..... | ¼o grain. |
| Damiana..... | 2 grains. |
| Gold and Sodium Chloride..... | ¼o grain.. |

Directions: Take one tablet four times a day with water.

262

Findings

PRESCRIPTION COURSE #650—Continued

FOR IMPOTENCE—continued

Prescription #18:

| | |
|------------------------------------------|------------|
| Rx. Combined Hypophosphites, Cloudy..... | 15 ounces. |
| Lloyd's Iron..... | 1 ounce. |
| Tr. Cochineal q. s. or Tr. Cadbear..... | 60 drops. |

Directions: One teaspoonful before each meal.

Prescription #19:

| | |
|-----------------------------------|------------|
| Rx. Yohimbine Hydrochloride..... | ¼ grain. |
| Orchic Sunst. Desiccated..... | 1½ grains. |
| Pituitary Body Anterior Lobe..... | 1½ grains. |
| Suprarenal Gland Desiccated..... | 1½ grains. |
| Thyroid Gland Desiccated..... | ¾ grain. |
| Powdered Charcoal q. s. | |

Directions: Take one capsule immediately after meals.

PRESCRIPTION COURSE #700

FOR PROSTATIC TROUBLES

Prescription #77:

| | |
|--------------------|------------|
| Rx. Gautheria..... | 1 ounce. |
| Salix Nigra..... | 4 ounces. |
| Saw Palmetto..... | 4 ounces. |
| Staphisagria..... | 4 drams. |
| Glycerine..... | 2 ounces. |
| Syrup q. s..... | 16 ounces. |

Directions: Take teaspoonful before meals in wineglassful of water. SHAKE BOTTLE BEFORE USING.

Prescription #87:

| | |
|------------------------------|-----------|
| Rx. Amonium Ichthyolate..... | 2 grains. |
| Ext. Belladonna Leaves..... | ½ grain. |
| Ext. Stramonium Leaves..... | ½ grain. |
| Ext. Hamamells..... | 1 grain. |
| Eucalyptol..... | 1 grain. |
| Oil Theobroma q. s. | |

Directions: Insert one suppository into the rectum every night at bedtime and every morning after the bowels have moved. KEEP THESE SUPPOSITORIES IN A COOL PLACE.

Prescription #40:

| | |
|---------------------------------|-------------|
| Rx. Hyoscyamine..... | ½000 grain. |
| Atropine Sulphate..... | ½000 grain. |
| Cannabis Sativa Spec. Tinc..... | ½ grain. |
| Benzoic Acid..... | ½6 grain. |
| Salol..... | 1 grain. |
| Hexamethylenetetramine..... | 3 grains. |

Directions: One tablet four times a day.

PRESCRIPTION COURSE #750

FOR MASTURBATION OR SELF-ABUSE

Prescription #51:

Rx. Lupulin & Bromide Compound, Improved (Upjohn) coated blue.

Directions: Take two tablets after each meal with water.

Prescription #53:

| | |
|--------------------------------|------------|
| Rx. Salix Nigra (Lloyd's)..... | 4 ounces. |
| Avena (Lloyd's)..... | 4 drams. |
| Glycerine..... | 2 ounces. |
| Essence Pepsin q. s..... | 16 ounces. |

Directions: Take one teaspoonful in wineglassful of water after each meal.

PRESCRIPTION COURSE #280

FOR NERVOUSNESS AND NERVOUS DEBILITY

Prescription #25:

| | |
|---------------------------------|------------|
| Rx. Pulsatilla (Lloyd's)..... | 4 drams. |
| Avena (Lloyd's)..... | 4 drams. |
| Ignatia (Lloyd's)..... | 60 min. |
| Iron (Lloyd's)..... | 1 ounce. |
| Glycerine..... | 2 ounces. |
| Essence of Pepsin q. s. ad..... | 16 ounces. |

Directions: One teaspoonful every three hours in water.

Findings

19 F. T. C.

PRESCRIPTION COURSE #280—Continued

FOR NERVOUSNESS AND NERVOUS DEBILITY—continued

Prescription #57:

| | |
|---------------------------|---------------|
| Rx. Lupulin..... | ¼ grain. |
| Scutellarin..... | ¼ grain. |
| Ergotin..... | ¼ grain. |
| Macrotin..... | ¼ grain. |
| Hyoscyamine Sulphate..... | 1/1000 grain. |
| Zinc Bromide..... | 1/10 grain. |

Directions: Two capsules three times a day.

PRESCRIPTION COURSE #300

FOR RHEUMATISM

Prescription #20 (Trifolium Comp. Tablets):

| | |
|------------------------------------|---------------|
| Rx. Extr. Red Clover Blossoms..... | ¼ grain. |
| Extr. Stillingia..... | ¼ grain. |
| Extr. Xanthoxylum..... | ¼ grain. |
| Extr. Lappa..... | ¼ grain. |
| Extr. Phytolacca..... | ¼ grain. |
| Extr. Blue Flag..... | ¼ grain. |
| Extr. Nux Vomica..... | 1/16 grain. |
| Extr. Echinacea..... | 1 1/2 grains. |

Directions: Take one tablet after each meal with half glass of water.

Prescription #44:

| | |
|--------------------------------|--------------|
| Rx. Salicylate Sodium..... | 2 ounces. |
| Iodide Sodium..... | 1 ounce. |
| Tinc. Macrotys (Lloyd)..... | 8 drams. |
| Hexamethylenamine..... | 1 ounce. |
| Tinc. Ptdophyllum (Lloyd)..... | 1 1/2 drams. |
| Glycerine..... | 10 drams. |
| Essence Pepsin q. s..... | 16 ounces. |
| Essence of Peppermint..... | 10 drops. |

Directions: One teaspoonful in water after each meal.

Prescription #60:

Rx. Sodium Phosphate U. S. P. colored blue by Mallinkrodt's.

Directions: Dissolve two heaping teaspoonsful in a glassful of water before breakfast. If bowels move more than twice a day, take only one teaspoonful.

PRESCRIPTION COURSE #350

FOR DISEASES OF WOMEN

Prescription #65:

| | |
|---------------------------|------------|
| Rx. Iron (Lloyd's)..... | 8 drams. |
| Leontin (Lloyd's)..... | 2 ounces. |
| Macrotys (Lloyd's)..... | 1 ounce. |
| Pulsatilla (Lloyd's)..... | 4 drams. |
| Glycerine..... | 1 ounce. |
| Essence Pepsin q. s..... | 16 ounces. |

Directions: Take one teaspoonful in water after each meal.

Prescription #66:

| | |
|--------------------------------------|------------|
| Rx. Phenacetin (Acetphenetidin)..... | 2 grains. |
| Acetylsalicylic Acid..... | 4 grains. |
| Camphor Monobromated..... | 1/2 grain. |
| Coloring..... | q. s. |

Directions: To relieve pain during the menstrual period only. Take one capsule with water. Take another capsule in two hours if necessary, if pain still continues.

Prescription #67:

| | |
|-------------------------------|-----------|
| Rx. Powd. Potassium Alum..... | 8 parts. |
| Zinc Sulphate..... | 2 parts. |
| Copper Sulphate..... | 1 part. |
| Sodium Borate..... | 1 part. |
| Morton's Iodized Salt..... | 12 parts. |
| Menthol..... | q. s. |
| Methyl Salicylate..... | q. s. |

Directions: Dissolve thoroughly three teaspoonsful of the powder in two quarts of hot water. Use as a vaginal douche night and morning.

Findings

PRESCRIPTION COURSE #350—Continued
FOR DISEASES OF WOMEN—continued

Prescription #81 (John Wyeth & Bros. #424):

- Rx. Glycerole of Tannin..... 10 percent.
- Boroglyceride and gelatin..... q. s.

Directions: Moisten the suppository in water and insert into vagina at bed time. Use a sanitary napkin during night to protect linen from soiling. Do not use during menstrual period.

PRESCRIPTION COURSE #400
FOR STERILITY IN WOMEN

Prescription #65:

- Rx. Iron (Lloyd's)..... 8 drams.
- Leontin (Lloyd's)..... 2 ounces.
- Macrotys (Lloyd's)..... 1 ounce.
- Pulsatilla (Lloyd's)..... 4 drams.
- Glycerine..... 1 ounce.
- Essence Pepsin q. s..... 16 ounces.

Directions: Take one teaspoonful in water.

Prescription #69:

- Rx. Ovary (whole tablet) made by Hynson and Westcott.

PRESCRIPTION COURSE #450
FOR DIABETES

Prescription #30:

- Rx. Chionanthus (Lloyd's)..... 12 drams.
- Lycopus..... 12 drams.
- Fragrant Sumach..... 12 drams.
- Sodium Benzoate..... 10 grains.
- Glycerine..... 1 ounce.
- Water q. s. ad..... 16 ounces.

Directions: One teaspoonful after each meal with water.

Prescription #31:

- Rx. Island of Langerhans, desiccated, Kerakote 5 grains each. Give 90 capsules.

Directions: One capsule after each meal with water.

PRESCRIPTION COURSE #500
FOR KIDNEY AND BLADDER TROUBLE

Prescription #39:

- Rx. Eryngium..... 6 drams.
- Erigeron..... 6 drams.
- Hydrangea..... 2 ounces.
- Triticum Repens..... 2 ounces.
- Saw Palmetto..... 3 ounces.
- Essence Pepsin q. s..... 16 ounces.

Directions: One teaspoonful in water before each meal.

Prescription #40, Cystitis Tablets #045A (Chic. Pharm. Co. Sugar coated pink):

- Rx. Hyoscyamine..... ½⁰⁰⁰ grain.
- Atropine Sulphate..... ½⁰⁰⁰ grain.
- Sp. Tinc. Cannabis Sativa..... ¼ grain.
- Benzole Acid..... ¼⁰ grain.
- Salol..... 1 grain.
- Hexamethylenetetramine..... 3 to 4 grains.

Directions: Take one tablet four times a day.

PRESCRIPTION COURSE #550
FOR POLLUTIONS OR NIGHT LOSSES

Prescription #52, Sugar coated pills:

- Rx. Lupulin Concentrated..... ½ grain.
- Scutellarin Concentration..... ½ grain.
- Ergotin (Bonjean)..... ¼ grain.
- Cimicifugin Concentration..... ¼ grain.
- Hyoscyamine Sulphate..... ¼⁰⁰⁰ grain.
- Zinc Bromide..... ¼⁰ grain.

Directions: Take two pills three times a day before each meal.

Findings

19 F. T. C.

PRESCRIPTION COURSE #550—Continued

FOR POLLUTIONS OR NIGHT LOSSES—continued

Prescription #55:

| | |
|---------------------------------|------------|
| Rx. Staphisagria (Lloyd's)..... | 4 drams. |
| Sallx Nigra..... | 4 ounces. |
| Avena..... | 4 drams. |
| Aromatic Cascara..... | 4 drams. |
| Glycerine..... | 2 ounces. |
| Essence Pepsin q. s..... | 16 ounces. |

Directions: Take one teaspoonful in wineglassful of water before each meal.

PRESCRIPTION COURSE #150

(GLEET OR CHRONIC GONORRHEA)

Prescription #72:

| | |
|---------------------------|-----------|
| Rx. Uritone capsules..... | 5 grains. |
|---------------------------|-----------|

Directions: Open one capsule and dissolve the powder in a glassful of water and drink it. Do this three times a day.

Prescription #74:

| | |
|-------------------------------------------------------|-------------|
| Rx. Zinc Phenolsulphonate..... | 5 grains. |
| Aluminum Sulphonate..... | 5 grains. |
| Berberine Sulphate..... | 1/40 grain. |
| Cannabine Tannate..... | 1/40 grain. |
| Dissolve 6-7 capsules in one pint of distilled water. | |

Directions: Inject three times a day. First urinate, then inject very slowly one syringe-ful into the urethral canal. Retain the solution in the canal for five minutes. If there is much discharge present, inject every 3 hours. SHAKE BOTTLE BEFORE USING.

Prescription #75:

| | |
|---------------------------------|------------|
| Rx. Staphisagria (Lloyd's)..... | 4 drams. |
| Avena (Lloyd's)..... | 4 drams. |
| Pulsatilla (Lloyd's)..... | 2 drams. |
| Saw Palmetto (Lloyd's)..... | 2 ounces. |
| Glycerine..... | 2 ounces. |
| Essence of Pepsin q. s. ad..... | 16 ounces. |

Directions: Take one teaspoonful with little water three times a day after each meal. SHAKE BOTTLE BEFORE USING.

PRESCRIPTION COURSE #100

FOR GONORRHEA IN MEN

Prescription #71:

| | |
|--------------------------|-------------|
| Rx. Lunisol (Hille)..... | 192 grains. |
| Aqua dist. q. s..... | 8 ounces. |

Directions: Inject three times a day. First urinate, then inject very slowly one syringe-ful into the urethral canal. Retain the solution for five minutes. If much discharge, inject every 3 hrs.

Prescription #73:

| | |
|--------------------------------|------------|
| Rx. Zinc Sulphocarbolate..... | 24 grains. |
| Zinc Acetate..... | 8 grains. |
| Glycerine..... | 1 dram. |
| Fluid Hydrastis (Merrill)..... | 2 drams. |
| Aqua dist. q. s..... | 8 ounces. |

Directions: After the injection #71 has been all used up, then start using this bottle as injection. Inject three times a day.

Prescription #72:

| | |
|---------------------------|-----------|
| Rx. Uritone capsules..... | 5 grains. |
|---------------------------|-----------|

Directions: Open capsule and dissolve powder in a glassful of water and drink it. Do this three times a day.

Prescription #76:

Gonocystol or Kavalaetol made by Tosse & Co., Hamburg, Germany.

Directions: One capsule three times a day with water.

262

Findings

PRESCRIPTION COURSE #110

GONORRHEA IN WOMEN

Prescription #65:

| | |
|-----------------------------|------------|
| Rx. Iron (Lloyd's)..... | 8 drams. |
| Leontin (Lloyd's)..... | 2 ounces. |
| Macrotys (Lloyd's)..... | 1 ounce. |
| Pulsatilla (Lloyd's)..... | 4 drams. |
| Glycerine..... | 2 ounces. |
| Alcohol..... | 1 ounce. |
| Essence of Pepsin q. s..... | 16 ounces. |

Directions: Take one teaspoonful in water after each meal.

Prescription #67:

| | |
|-------------------------------|-----------|
| Rx. Powd. Potassium Alum..... | 8 parts. |
| Zinc Sulphate..... | 2 parts. |
| Copper Sulphate..... | 1 part. |
| Sodium Borate..... | 1 part. |
| Morton's Iodized Salt..... | 12 parts. |
| Methol..... | q. s. |
| Methyl Salicylate..... | q. s. |

Directions: Dissolve thoroughly three teaspoonsful of the powder in two quarts of hot water. Use as a vaginal douche night and morning.

Prescription #68 (Wyeth & Co. #127):

Rx. Protargol 2%.
Boroglyceride and gelatin q. s., to make 100 grains.

Directions: Moisten the suppository in water and insert in the vagina at bed time. Use a sanitary napkin during night to protect the linen from soiling. Do not use during menstrual period.

PRESCRIPTION COURSE #125

FOR HIGH BLOOD PRESSURE

Prescription #69 (Chicago Pharmacal #307B):

| | |
|--------------------------|-------------|
| Rx. Sodium Nitrate..... | 1 grain. |
| Sodium Glycocholate..... | 1/10 grain. |
| Echinacea Sp. Tr..... | 1 min. |
| Berberis Vulgaris..... | 1/4 grain. |
| Belladonna..... | 1/16 grain. |

Directions: One tablet before each meal and at bed time.

Prescription #80:

Rx. Sodium Phosphate U. S. P. Colored blue by Mallinkrodt's.

Directions: Dissolve two heaping teaspoonsful in a glassful of water before breakfast. If bowels move more than twice a day, take only one teaspoonful.

PRESCRIPTION COURSE #250

FOR ACNE

Prescription #6:

| | |
|---------------------------|------------|
| Rx. Calcium Sulphide..... | 1/2 grain. |
|---------------------------|------------|

Directions: Take one after meals with water.

Prescription #12:

| | |
|---------------------------------|------------|
| Rx. Iron (Lloyd's)..... | 12 drams. |
| Berberis..... | 2 ounces. |
| Fowler Solution..... | 3 drams. |
| Glycerine..... | 1 ounce. |
| Essence of Pepsin q. s. ad..... | 16 ounces. |

Directions: One teaspoonful after each meal.

Prescription #92:

| | |
|-------------------------|-----------|
| Rx. Zinc Ointment..... | 8 ounces. |
| Lanolin..... | 8 ounces. |
| Calomel..... | 1 ounce. |
| Ammoniated Mercury..... | 1 ounce. |

Directions: Apply sparingly to affected parts at night and in the morning.

Findings

19 F. T. C.

PRESCRIPTION COURSE #260

FOR PSORIASIS

Prescription #8:

Rx. Calcium Sulphide..... ½ grain.

Directions: Take one tablet after each meal with a little water.

Prescription #12:

Rx. Lloyd's Iron..... 1½ ounces.
 Berberis..... 2 ounces.
 Fowlers Solution..... 3 drams.
 Glycerine..... 1 ounce.
 Alcohol..... 1 ounce.
 Essence Pepsin q. s..... 16 ounces.

Directions: One Teaspoonful after each meal with a little water.

Prescription #91:

Rx. Kerolysin (Upjohn) contains:

Acid Benzolic..... 12 percent.
 Acid Salicylic..... 6 percent.
 Thymol..... 1¼ percent.

Directions: Apply freely on the affected parts, after first removing any loose scales. Use it at night and in the morning. After several days of use, when the surface shows only fine scaling, discontinue this ointment and start applying ointment #93 for a week. If a perfect smooth fresh skin does not result, begin over again by using #91 for a few days and follow up with #93 for a week.

Prescription #93:

Rx. Calomoin Ointment (Upjohn).

Directions: See prescription #91.

PRESCRIPTION COURSE #270

FOR ECZEMA

Prescription #8:

Rx. Calcium Sulphide..... ½ grain.

Directions: Take one after meals.

Prescription #12:

Rx. Lloyd's Iron..... 1½ ounces.
 Berberis..... 2 ounces.
 Fowlers Solution..... 3 drams.
 Glycerine..... 1 ounce.
 Alcohol..... 1 ounce.
 Essence Pepsin q. s..... 16 ounces.

Directions: One teaspoonful after each meal.

Prescription #90:

Rx. Acid Salicylic..... 3 grains.
 Menthol..... 3 grains.
 Sulphur Precipitate..... 30 grains.
 Zinc Oxide..... 1 dram.
 Oil Cade (Muth)..... 60 grains.
 Amyll..... 107 grains.
 Ung. Petrolatum..... 1 ounce.

Directions: Apply twice a day.

Prescription #94:

Rx. Calamine..... 120 grains.
 Zinc Oxide..... 120 grains.
 Phenol..... 40 grains.
 Glycerine..... 180 grains.
 Aqua dist. ad..... 8 ounces.

Directions: To be used where there is too much itching.

PAR. 4. While certain of the aforesaid medicines or drugs are sometimes used by the medical profession in the treatment of the respective diseases ailments or habits so listed in cases in which the ascertained physical conditions of respective patients indicate such use as proper and helpful for such several patients, none of said prescriptive courses of drugs and medicines is complete, proper, effective, or safe

treatment for any of said diseases, ailments or habits in any and all persons and in any and every case. Each of said prescriptive courses of drugs or medicines may be helpful or harmful or useless to the several purchasers and users thereof, according to the varying and unknown physical condition of each several purchaser and user thereof. A purchaser and user of any of said prescriptive courses of drugs or medicines, without competent medical examination, advice, and supervision does not know in any case whether such prescriptive course of drugs or medicines will be helpful, or harmful or useless. Among purchasers and users of said prescriptive courses of drugs or medicines, the same will be helpful to some, injurious to others and of no value to others of them. In some of the diseases, ailments or habits the medicines furnished are actually harmful or dangerous and the actual symptoms or physical or organic condition of the respective customer indicate the necessity for entirely different remedies. In other instances the medicines furnished are not beneficial for the particular customer and are potentially harmful because they lull the customer into a false sense of security and thereby delay the obtaining of proper or adequate treatment.

PAR. 5. 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 competition with respondent and in interstate commerce of medicinal preparations similar in kind to those of respondent and also of those designed, intended, or used for the treatment of the various diseases and bodily ailments, for which respondent's said preparations are represented and advertised as herein 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, to the purchasers thereof to whom or to which they are or have been sold. Such competitors sell their products to wholesale and retail druggists for ultimate resale to members of the purchasing public and in some instances, directly to the consumers. Respondent has been, during the aforesaid time, in direct and substantial competition in interstate commerce in the sale of its said preparations with such other individuals, firms and corporations.

PAR. 6. Numerous manufacturing chemists sell and distribute in competition with respondent proprietary medicines containing practically the same drugs and in practically the same quantities as the medicines sold by respondent and some of the medicines sold by respondent are exactly the same as proprietary medicines which have long been manufactured and sold by such manufacturing chemists.

The majority of such manufacturing chemists confine their advertising and claims to a correct statement of the therapeutic effect which may be expected of such medicines. These numerous proprietary medicines are sold by such manufacturers to wholesale and retail drug stores throughout the country.

PAR. 7. The representations of respondent as aforesaid have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the belief that respondent's said prescriptive courses of drugs or medicines are a cure, remedy, or competent and adequate treatment, respectively, for the various and sundry diseases, ailments, and physical conditions of the human body for which they are recommended by respondent as aforesaid or that they will give relief in all such cases when bought and used by any and all purchasers thereof. In truth and in fact each of said prescriptive courses of drugs or medicines has only such therapeutic value and power as are specifically found in paragraph 4 hereof. Said representations have had and do have the tendency and capacity to induce members of the public to buy and use the said medicines because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from said competitors engaged in the sale in interstate commerce of medicines adapted to and used for the treatment of the various diseases, ailments and physical conditions of the human body for which respondent represents its said preparations, respectively, or from competitors engaged in the sale as aforesaid of medicines adapted to and used for the treatment of the diseases which produce or cause the conditions or ailments for which respondent represents his medicines, respectively, to be treatments.

PAR. 8. There are among the said competitors of respondent in the sale of his said medicines and drugs 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 its said competitors, to the substantial injury and prejudice of such competitors and to the injury of the public.

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 amended complaint of the Commission, the answer of the respondent, the testimony in support of the charges of said amended complaint and briefs filed herein 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 the respondent B. M. Ross, his agents, representatives, and employees in connection with the sale, offering for sale or distribution in interstate commerce and the District of Columbia, do cease and desist from representing by express statement, by implication or by the use of statements, testimonials or endorsements of others—

(1) That the medicines sold by respondent as Prescription Course #200 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for syphilis;

(2) That the medicines sold by respondent as Prescription Course #180 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for poor blood or anemia;

(3) That the medicines sold by respondent as Prescription Course #600 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for spermatorrhea;

(4) That the medicines sold by respondent as Prescription Course #650 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for impotence;

(5) That the medicines sold by respondent as Prescription Course #700 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for prostatic troubles;

(6) That the medicines sold by respondent as Prescription Course #750 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for masturbation;

(7) That the medicines sold by respondent as Prescription Course #280 or any medicines of the same or substantially the same ingredi-

ents under any other name are a cure, remedy or competent and adequate treatment for nervousness and nervous debility;

(8) That the medicines sold by respondent as Prescription Course #300 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for rheumatism;

(9) That the medicines sold by respondent as Prescription Course #350 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for diseases of women or leucorrhoea, amenorrhoea, dysmehorrhoea and menorrhagia;

(10) That the medicines sold by respondent as Prescription Course #400 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for sterility;

(11) That the medicines sold by respondent as Prescription Course #450 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for diabetes;

(12) That the medicines sold by respondent as Prescription Course #500 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for kidney and bladder trouble;

(13) That the medicines sold by respondent as Prescription Course #150 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for gleet or chronic gonorrhoea;

(14) That the medicines sold by respondent as Prescription Course #550 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for pollutions;

(15) That the medicines sold by respondent as Prescription Course #100 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for gonorrhoea in men;

(16) That the medicines sold by respondent as Prescription Course #110 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for gonorrhoea in women;

(17) That the medicines sold by respondent as Prescription Course #125 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for high blood pressure;]

(18) That the medicines sold by respondent as Prescription Course #250 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for acne;

(19) That the medicines sold by respondent as Prescription Course #260 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for psoriasis;

(20) That the medicines sold by respondent as Prescription Course #270 or any medicines of the same or substantially the same ingredients under any other name are a cure, remedy or competent and adequate treatment for eczema.

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 has complied or is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

M. KUFFERMAN, SAMUEL LAN, S. LAVINE, AND J, FEIGHERY, COPARTNERS, DOING BUSINESS UNDER THE TRADE NAME LEIPZIG IMPORTING 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 2141. Complaint, Dec. 22, 1933—Decision, Oct. 23, 1934

Where a firm engaged in sale of a proprietary article designated "Philodermin Salbe", for treatment of dandruff and other conditions of hair and scalp, represented in advertisements in newspapers and periodicals that said product was "developed by a great German scientist", destroyed dandruff quickly, restored health to the scalp, prevented baldness, saved the hair that was left, and would open the pores, grow new hair in many cases, and halt signs of baldness, and had been sold and used in Germany, and made thousands of friends, and been tried and proved effective; Facts being said product consisting of 1 percent sulphur mixed with petroleum, together with some perfume, did not constitute an efficient therapeutic agent for cure or prevention of dandruff or loss of hair, and could not cause new hair to grow, or restore health to the scalp;

With effect of deceiving and misleading members of the public who had purchased and used same in reliance upon such representations, and with capacity and tendency so to do, and effect of diverting trade to it from competitors who deal in articles or preparations for treatment of hair and scalp, and temporary removal of dandruff, and some of whom do not represent that through use of their products said condition may be prevented or cured, loss of hair and baldness be prevented, or new hair caused to grow:

Held, That such practices, under the circumstances 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.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of Section 5 of the Federal Trade Commission Act, the Commission charged respondent partners, engaged in the sale of a proprietary article called "Philodermin Salbe" for treatment of various conditions of the hair and scalp and with principal place of business in East Orange, N. J., with advertising falsely or misleadingly as to qualities or properties of product, in that they falsely represent that the use of said preparation will prevent baldness, dandruff, or loss of hair, restores health to the scalp and gives the

"choked hair roots" a chance to grow; and that it saves what hair the user of it may have, and that "you will see the difference. Within one week you will notice the change in your hair. In three weeks your mirror will tell a thrilling story. Your hair will be soft * * * lustrous * * * smooth. No more worries about dandruff or baldness. And then you can be proud of the 'Glory of Nature' * * * your own beautified hair!"¹

The publication and use by respondents of such statements, in connection with the advertisement or otherwise "in the sale of 'Philodermin Salbe' have the tendency and capacity to mislead and deceive and they have misled and deceived members of the public into believing that the said statements were and are true; and in reliance upon that belief into purchasing and using Philodermin Salbe in preference to preparations or proprietary articles sold by respondents' competitors; and have the further tendency and capacity to divert trade and they have caused trade to be diverted from competitors of respondents," engaged in the sale of various proprietary or other articles to members of the public for the same purposes for which respondents' said preparation is sold; all to the prejudice of the public and competitors and in violation of the provisions of Section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (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 answer 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 by counsel on behalf of the Commission, no one appearing 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:

¹ Other statements and representations alleged in the complaint as having been made by respondents in advertisements in newspapers and periodicals, are set forth in the findings, *infra*, at page 283.

Findings

19 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, M. Kufferman, Samuel Lan, and S. Lavine are residents of New Jersey, and the respondent, J. Feighery, is a resident of New York, and the said respondents are copartners doing business under the trade name Leipzig Importing Co. Said respondents have been engaged in business under the above trade name at all times since on or about September 1932, and they have a place of business at 730 Frelinghuysen Avenue, Newark, N. J.

PAR. 2. The respondents during all of the times since on or about September 1932 have been engaged in the sale of a proprietary article called Philodermin Salbe, which they have sold to members of the public located in various States of the United States other than New Jersey for use by the purchasers in treating dandruff and other pathological conditions of the hair and scalp of the user, and the respondents have caused the Philodermin Salbe, when sold by them, to be transported from New Jersey, or from the State of origin of the shipment thereof, to, into, and through States other than New Jersey, or the State of origin of the shipment, to the purchasers.

PAR. 3. During all the times above mentioned other individuals, firms, and corporations located in various States of the United States, hereinafter called sellers, are and have been engaged in the business of the sale of various proprietary or other articles to purchasers, dealers therein who bought the proprietary or other articles for resale to the public, and members of the public who bought the same for their own use or consumption, and the said sellers have, respectively, caused their said proprietary or other articles, when so sold by them, to be transported from the State of the seller to, into, and through States other than the State of the seller, or the State of origin of the shipment, to the purchasers.

PAR. 4. The respondents above-named during all the times above mentioned have been and still are in competition in interstate commerce in the sale of Philodermin Salbe with the said sellers, respectively, referred to in paragraph 3 hereof.

PAR. 5. Philodermin Salbe, the product above referred to, in the sale of which respondents have been engaged, is a yellow ointment contained when sold by respondents in a small porcelain jar and consisting essentially of sulphur 1 percent mixed with petrolatum and perfumed with vanillin or a similar material.

PAR. 6. The respondents in connection with the sale of Philodermin Salbe caused advertisements to be published in newspapers,

magazines, and periodicals which were circulated among the public of the various States of the United States and which contained statements, among others, as follows:

HAIR FALLING OUT?

Does your comb show evidence of oncreeping baldness, dandruff, loss of vitality of the hair? Then *Philodermin Salbe* will perform wonders for you. Developed by a great German scientist, it destroys dandruff quickly, restores health to the scalp and gives your choked hair roots a chance to grow. We guarantee to save what hair you have and prevent baldness or return your money. No matter how many treatments you have used in the past, send for *Philodermin Salbe* today. It will amaze you. Send no money. Pay postman \$1.50 anywhere in the U. S.

LEIPZIG IMPORTING COMPANY

Main & Grove Sts., East Orange, N. J. Dept. A-7.

In the first week apply this treatment three times. After six days you will find that every trace of dandruff has vanished.

Any oncoming signs of baldness will be halted. This is true because the *Philodermin Treatment* cleanses, lubricates and stimulates the circulation of nourishing blood to the hair roots.

Keep up this treatment once or twice weekly and you will supply the strength needed by choked hair roots. *Philodermin Salbe* will open the pores and in many cases will actually grow new hair. However, it is not advertised and sold as a hair grower.

German Discovery. For years this product has been sold and used in Germany. It has made thousands of friends. Our files are full of their letters describing their own cases and their success with the use of *Philodermin Salbe*. So you see, this is not an experiment. This hair preserver has been tried and proved effective.

PAR. 7. The respondents' product, *Philodermin Salbe*, is not an efficient therapeutic agent for the cure or the prevention of dandruff or to prevent loss of hair or baldness of a person who uses it and it cannot cause new hair to grow on the head of the user.

PAR. 8. The statements which the respondents caused to be made in the advertisements, mentioned and referred to in paragraph 6 hereof, to the effect that the use of their proprietary article, *Philodermin Salbe*, will prevent dandruff, loss of hair, and baldness, and that its use will grow new hair, were and are untrue in that the use of *Philodermin Salbe* will not prevent or cure the condition of dandruff or prevent loss of hair and baldness of the user; will not restore health to the scalp; and by its use will not cause new hair to grow on the user's head. *Philodermin Salbe* is not an efficient therapeutic agent for such purposes.

PAR. 9. The publication and the use by respondents in connection with the sale thereof, of the statements regarding *Philodermin Salbe*

Order

19 F. T. C.

contained in the advertisements, mentioned and referred to in paragraph 6 hereof, have the capacity and the tendency to deceive and mislead, and they have deceived and misled members of the public, purchasers who bought Philodermin Salbe for use or consumption, into believing that the said statements were and are true; and in reliance upon that belief, into purchasing and using Philodermin Salbe.

PAR. 10. Among the competitors of the respondents, referred to in paragraph 3 hereof, are some who sell and cause to be sold preparations or proprietary articles for the treatment of the hair and scalp and who, respectively, do not represent that by the use of their products dandruff may be prevented or cured; or that the loss of hair and baldness may be prevented; or that by the use of their product new hair will be caused to grow on the user's head.

PAR. 11. In consequence of the practices of the respondents above set forth, trade in articles or preparations for the treatment of the hair and scalp, including the temporary removal of the excessive proliferation of the epithelial cells, otherwise known as dandruff, from the scalp, was diverted to the respondents to the prejudice and injury of competitors and the public.

CONCLUSION

The practices of the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, copartners, doing business under the trade name Leipzig Importing Co., under the conditions and circumstances described in the foregoing findings were to the prejudice and injury of competitors of the respondents 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents to the complaint, testimony and evidence introduced, and upon the brief of counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, copartners, doing business under the trade name Leipzig Importing Co., have violated the provisions of an Act of Congress approved

280

Order

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, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, doing business under the name Leipzig Importing Co. or trading under their own names or any other trade name, in connection with the sale or offering for sale of Philodermin Salbe or of any proprietary article or preparation for the treatment of dandruff and other pathological conditions of the hair and scalp in interstate commerce between and among the several States of the United States and in the District of Columbia, do—

Cease and desist, From representing directly, or indirectly, through their agents and salesmen, in advertisements in newspapers, magazines, periodicals, or otherwise—

(1) That the Philodermin Salbe, now sold by the respondents, or any other proprietary article or preparation, sold by them or any of them, will by its use cure the condition of the scalp known as dandruff, cause hair to grow or regrow or prevent the loss of hair and baldness, or that it will restore health to the scalp or head of the user.

(2) That Philodermin Salbe, as now composed, or any other proprietary article or preparation, sold by the respondents or any of them, is an efficient therapeutic agent in the medical treatment of any disease or pathological condition of the hair and scalp of the user unless and until the said Philodermin Salbe or other proprietary article or preparation is so composed that it constitutes and is an efficient therapeutic agent in the medical treatment of a particular disease or diseases or pathological condition of the hair and scalp of the user.

It is further ordered, That the respondents, M. Kufferman, Samuel Lan, S. Lavine, and J. Feighery, 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 they have complied with this order to cease and desist.

Complaint

19 F. T. C.

IN THE MATTER OF
THAYER PHARMACAL COMPANY AND THAYER SALES
CORPORATION

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

Docket 2196. Complaint, June 12, 1934—Decision, Oct. 23, 1934

Where a corporation engaged in the manufacture and sale of toilet preparations including a face cream designated and advertised as "Old Egyptian Turtle Oil Cream", and its corporate selling agency, engaged in the advertisement, sale, and distribution thereof to and through retail and chain and department stores, represented upon the labels that said cream would rejuvenate the skin, its retail selling price was \$2.50 per jar, and it was an "Old Egyptian Cream", facts being it did not have the effect claimed, said sum, used to create the impression of a bargain in the mind of the purchaser at a lower figure, was far in excess of the retail price contemplated and charged, and said cream was not one of the more or less preferred old Egyptian creams or products made from an old or other Egyptian formula; with tendency and capacity to mislead and deceive the purchasing public, into the belief that the various aforesaid statements and representations were true, and induce the purchase of said product in reliance on such erroneous beliefs, and unfairly divert trade from competitors to it:

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

Mr. John W. Hilldrop for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., for respondents.

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 Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, have been and are 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, Thayer Pharmacal Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State. It is now, and for several years last past has been, engaged at said city in the business of manufacturing and selling

perfumes, powders, lotions, and other toilet articles, among which is a face cream called by respondent, "Old Egyptian Turtle Oil Cream", which is sold as a massage cream for use in beautifying the face.

Respondent Thayer Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, of said State. It is associated with respondent Thayer Pharmacal Company in the sale and distribution of the said "Old Egyptian Turtle Oil Cream."

Old Egyptian Turtle Oil Cream is packed by respondents in jars and shipped by them to their customers, which are department stores, drug stores and beauty shops, into and through various States of the United States, to the places of business of said customers, many of which are in States other than the State of Illinois. Such stores and beauty shops sell Old Egyptian Turtle Oil cream direct to the consuming public, with the representations on the jars containing same as hereinafter described.

PAR. 2. In the course and conduct of their said business respondents are in substantial competition with individuals, copartnerships, and corporations engaged in the manufacture and sale, or the sale, and transportation between and among the various States of the United States, of lotions, face creams, and other preparations for use in beautifying of the face.

PAR. 3. In aid of the sale of the said "Old Egyptian Turtle Oil Cream", respondents represent upon the labels of the jars containing the same, that:

(a) Said cream, used as directed, will rejuvenate the skin, correct crowsfeet, lines, wrinkles, and excessive dryness.

(b) Its retail selling price is stamped on the labels of the jars as \$2.50.

(c) Said cream is Old Egyptian Cream.

Said representations are false and misleading, in that:

(a) Said cream, used as directed, will not rejuvenate the skin, nor correct crowsfeet, nor remove lines or wrinkles from the face, nor will it prevent excessive dryness thereof.

(b) The \$2.50 appearing upon the label, as aforesaid, was never intended by respondents to be the retail price of said cream, but is far in excess of the price intended by the respondents to be charged, and actually charged, by retailers therefor; said price of \$2.50 is placed on said label by respondents with the intent and purpose of deceiving purchasers into the belief that when said cream is sold to them by retailers at a less price they are obtaining a bargain.

(c) Said cream is not Old Egyptian Cream and is not made from an old, or other, Egyptian formula.

There is a preference on the part of some consumers of facial creams for Old Egyptian Cream or products made from old Egyptian formulas, and the aforesaid use by respondent of the words "Old Egyptian" has the tendency and capacity to deceive the purchasing public into the belief that the product "Old Egyptian Turtle Oil Cream" is Egyptian, or is made from an old Egyptian formula.

PAR. 4. Each and all of the false and misleading statements and representations referred to in paragraph 3 hereof, had and have the capacity and tendency to mislead and deceive the consuming public into the belief that they are true, and to induce it to purchase said cream in said belief, and to unfairly divert trade from said competitors to the respondents, and to otherwise injure said competitors.

PAR. 5. The acts and practices set forth in paragraph 3 hereof are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, hereinafter referred to as respondents, charging them with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondents, having entered their appearance and having filed their answers herein, hearing was held and evidence was thereupon introduced on behalf of the Commission, the respondents introducing no evidence, before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon, this proceeding coming on for final hearing on the record, the respondents having waived in writing briefs and oral arguments, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Thayer Pharmacal Company, is a corporation organized and existing under the laws of the State

of Illinois, with its principal place of business in the city of Chicago in said State; being now and for several years last past engaged in the business of manufacturing and selling among the several States of the United States, perfumes, powders, lotions, and other toilet articles, among which is a face cream called and advertised by respondent as "Old Egyptian Turtle Oil Cream", which is sold as a massage cream for use in beautifying the face.

Respondent, Thayer Sales Corporation, is a corporation likewise organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, Ill.; being associated with respondent Thayer Pharmacial Company as its selling agent in the advertisement, sale and distribution of the said Old Egyptian Turtle Oil Cream in interstate commerce among the several States of the United States, and each of the respondents, Thayer Pharmacial Company and Thayer Sales Corporation, is in competition with individuals, firms, and corporations likewise engaged in manufacturing and selling in commerce, among the several States of the United States, lotions, face creams, and other preparations for use in the beautifying of the face.

PAR. 2. The methods of the distribution and sale of the said Old Egyptian Turtle Oil Cream are as follows: It is sold by respondents to retail stores, chain stores and department stores among the several States of the United States, and which said retail, chain and department stores sell same by retail to the purchasing public.

PAR. 3. In aid of the sale of Old Egyptian Turtle Oil Cream respondents represent upon the labels of the jars containing the same that: (a) said cream used as directed will rejuvenate the skin; (b) its retail selling price is \$2.50 per jar; (c) that said cream is "Old Egyptian Cream".

Said representations are false and misleading in that: (a) said cream used as directed will not rejuvenate the skin; (b) the sum of \$2.50 appearing upon the labels on the jars containing the cream, as aforesaid, was never intended by respondents to be the retail price of the cream, but is far in excess of the price intended by the respondents to be charged and actually charged by retailers therefor; (c) said price of \$2.50 is placed on said labels by respondents with the intent and purpose of deceiving purchasers into the belief that, when the said cream is sold to them by retailers at a less price, they are obtaining a bargain; (d) said cream is not old Egyptian cream and is not made from an old or other Egyptian formula.

PAR. 4. There is a preference on the part of some of the consumers of facial creams for old Egyptian cream or products made from old Egyptian formulas, and the aforesaid use by respondents of

Order

19 F. T. C.

the words, "Old Egyptian" has a tendency and capacity to deceive the purchasing public into the belief that the product, "Old Egyptian Turtle Oil Cream", is Egyptian or is made from an old Egyptian formula.

PAR. 5. Each and all of the false and misleading statements and representations referred to in paragraph 3 hereof, have a capacity and tendency to mislead and deceive the consuming public into the belief that they are true, and to induce it to purchase said cream in said belief, and to unfairly divert trade from said competitors to the respondents.

CONCLUSION

The acts and practices set forth in paragraphs 2 and 3 hereof are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress 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 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, Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of a certain face cream or lotion by said respondents, advertised and sold under the name of "Old Egyptian Turtle Oil Cream" do cease and desist from representing by labels or in advertisements, or otherwise: (a) that the use of the said cream as directed will rejuvenate the skin, or by representing that any cream manufactured and sold by respondents, under any other name or designation will rejuvenate the skin; (b) from the use of the word "rejuvenate" in the advertising of any other cream now sold or hereafter to be sold by respondents in interstate commerce; (c) from representing that the sum of \$2.50, or any other sum greater than the actual, usual and customary selling price charged the buying public therefor, is the selling price of said cream; (d) from the use of the word "Egyptian" in the phrase "Old Egyptian Cream", and from

286

Order

using the word "Egyptian" in connection with and as descriptive of said cream.

It is further ordered, That the respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission their reply in writing, setting forth in detail the manner in which they have complied with the order to cease and desist, hereinbefore set forth.

IN THE MATTER OF
UCANCO CANDY COMPANY, INC.

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

Docket 1795. Complaint, Apr. 29, 1930—Decision, Oct. 29, 1934

Where a corporation engaged in manufacture and sale of candy, including (a) three so-called "break and take" assortments with explanatory display cards, composed of (1) forty bars of uniform quality, size and shape, within the individual wrappers of which there was concealed a slip containing thereon "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, (2) forty-eight bars of uniform quality, etc., within the individual wrappers of which there was concealed a slip containing the figure 1¢, 2¢ or 3¢, as the price to be paid, as above set forth, and (3) forty bars of candy, within the wrappers of ten of which there was concealed a slip bearing the word "free" and entitling the chance purchaser to such piece without payment of the 5 cents charged the purchasers of the other thirty bars; and, (b) two assortments with punch boards consisting of (1) forty bars of uniform size, shape and quality, the retail price of which was 1, 2, 3, 4, or 5 cents depending upon the figure contained upon the punch selected and pushed from the accompanying board, and, (2) forty bars of uniform size, etc., which were secured either without charge, or for payment of 5 cents, depending upon chance selection of a punch bearing the number "1" or "2" in the case of the former, or "3", "4", or "5" in the case of the latter;

Sold said various assortments, together with said display cards or punch boards, as the case might be, so packed and assembled that they might and would be resold through such lottery or gaming devices, and could not be sold otherwise, without unpacking, disassembling, and rearranging the same, with knowledge that they would thus be resold to the consuming public by lot or chance, to wholesalers, jobbers, and retailers, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers, who sell candy by such methods, with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result that some of its competitors, who can compete on even terms only through following such practices to meet the growing demand for candy thus sold from small retailers near schools, and the preference of largest class of purchasers and consumers of such candy, i. e., the children, were put to a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the

former, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, gambling among children was taught and encouraged, and sales of the so-called "straight goods" type with their larger pieces or better quality were decreased by the competition, principally, of the gambling or lottery feature connected with the other:

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

Mr. Henry C. Lank for the Commission.

Cook & Balluff, of Davenport, Iowa, 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 Ucanco Candy 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 Delaware, with its principal office and place of business located in the city of Davenport, State of Iowa. 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 Davenport, State of Iowa, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the 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—

(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

Complaint

19 F. T. C.

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.

Respondent furnishes to said wholesale dealers and jobbers 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 and jobbers of respondent 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. Respondent thus supplies to and places in the hands of others the means of conducting lotteries, in accordance with respondent's said sales plans.

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 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 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, 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, Ucanco Candy Company, Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer, and the case was set down for the taking of testimony 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 hearing on the briefs of counsel for the Commission and for the respondent and upon the record. The Commission, now having considered the matter 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

PARAGRAPHS 1. Respondent, Ucanco Candy Company, Inc., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business in the city of Davenport, State of Iowa. Respondent is now, and for more than ten years last past, has been engaged in the manufacture of candy in Davenport, Iowa, and in the sale and distribution of said candy to wholesalers and jobbers in the State of Iowa 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 Iowa to purchasers thereof in the States of the United States other than the State of Iowa. 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. Among the candies manufactured and sold by respondent at the time the complaint was issued in April 1930 and for several

years prior thereto and until February 1934 was an assortment of candy consisting of forty candy bars of a uniform quality, size, and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, 3¢, 4¢, or 5¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 3. Another package of candy manufactured and sold by respondent, beginning several years prior to the issuance of the complaint and continuing until about February 1934 consisted of forty-eight candy bars of a uniform quality, size, and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, or 3¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 4. During the period of time beginning several years before the complaint was issued and continuing until about February 1934 the respondent also manufactured and distributed an assortment of candy consisting of forty bars of candy with each of said bars of candy contained within a wrapper. Within the wrapper of ten of said bars of candy was a slip of paper stating that the bar of candy was *free*, the other thirty bars of candy to be retailed at a price of 5 cents each. The said slips of paper bearing the statement that the bar of candy was free were effectively concealed from the consumer until he had made his selection and removed the wrapper. Whether the ultimate consumers procured a bar of candy free or paid 5 cents for it was thus determined wholly by lot or chance.

PAR. 5. In each of said assortments, as described in paragraphs 2, 3, and 4 above, was fastened a display card bearing legends printed thereon stating that the bars of candy were being sold by the methods above described. (Commission's Exs. 2 and 4.)¹

¹ Not published.

PAR. 6. Since February 1934 respondent has been manufacturing and selling two assortments involving lot or chance in the distribution of candy to the ultimate consumer.

One of such assortments consists of forty bars of candy of uniform size, shape, and quality, and a device commonly referred to as a punch board. The board has forty punches (Com. Ex. 6) and when one of the punches is selected and pushed from the board the retail price at which said bar of candy is to be sold to the consuming public is disclosed. The said retail price is effectively concealed from the consumer until he has made his selection, the retail prices said punches are 1¢, 2¢, 3¢, 4¢, or 5¢, and these are the prices which the consumer pays the retail merchant. The punch board has a legend printed thereon stating that the bars of candy are being sold by the above described method. 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¢, said price being determined wholly by lot or chance.

The other assortment which respondent has been manufacturing and selling since February 1934 involving lot or chance in the distribution to the ultimate consumer, consists of forty bars of candy of uniform size, shape, and quality together with a punch board. The punch board is the same as above described but has a legend printed thereon stating that those procuring numbers 1 and 2 receive a bar of candy free and those procuring numbers 3, 4, and 5 pay 5 cents for a bar of candy, and this is the method by which said bars of candy are distributed to the consuming public. The ultimate consumers thus procure bars of candy of uniform size, shape, and quality free or for the price of 5 cents, the same being determined wholly by lot or chance.

PAR. 7. The lottery, prize, or draw packages described in paragraphs 2, 3, 4, and 5 above, are generally referred to in the candy trade of industry as "break and take" packages. The packages or assortments of candy without the lottery, prize, or draw features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 8. Numerous retail dealers purchase the packages described in paragraphs 2, 3, 4, and 6 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display said packages for sale to the public as packed by the respondent, and with the display card furnished by the respondent, and the candy contained

in said packages is sold and distributed to the consuming public in the manner suggested by respondent.

PAR. 9. All sales made by respondent, whether to wholesalers and jobbers, or to retail dealers, are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber, or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the display card enclosed in each package without alteration or rearrangement. An examination of the packages or assortments of candy described in paragraphs 2, 3, and 4 herein, as packed, assembled, and sold by respondent, shows that said packages or assortments cannot be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said packages or assortments.

In the sale and distribution to jobbers and wholesale dealers, for resale to retail dealers, and to retail dealers direct, of packages and assortments of candy assembled and packed as described in paragraphs 2, 3, 4, and 6 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described, so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 10. The sale and distribution of candy by the retailers by the methods described in the findings as to the facts herein, is a sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take" method, buy from respondent, and others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms

only by giving the same or similar devices to retailers. This they are unwilling to do, and their sale of "straight goods" candy show a continued decrease.

There is a constant and growing demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 11. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gaming feature connected with the "break and take" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break and take" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 12. The pieces of candy in the "break and take" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy, or the quality of the candy in the "break and take" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" goods, or to compensate for the reduced price at which some of the pieces of candy are sold.

PAR. 13. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages or assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break and take" candy.

PAR. 14. Respondent manufactures candy which it sells to wholesalers, jobbers, and retailers without any lottery or chance feature. It began the manufacture of candy with a lottery or chance feature about 1927. The candy with the lottery or chance feature connected therewith constitutes approximately 50 percent of respondent's total business. The entire manufacturing business of the respondent for the year 1930 amounted to approximately \$300,000.

PAR. 15. 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 the said States have laws making lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Ucanco Candy Company, Inc., under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and 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 complaint of the Commission, the answer of the respondent, the testimony taken and the briefs filed, 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, Ucanco Candy Company, Inc., its officers, agents, representatives, and employees in the manu-

facture, 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 to be made or may be made 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.

(4) 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, some of which contain within their wrappers tickets bearing the price of 5 cents, and others containing within their wrappers tickets stating that the particular bar of candy is free.

(5) Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers, assortments of candy together with a device commonly referred to as a punch board, for use in distributing or selling said candy to the public at retail.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(7) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public—

(a) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, respectively, depending upon the price tag enclosed in the wrapper of 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¢, or 3¢, respectively, depending

Order

19 F. T. C.

upon the price tag enclosed in the wrapper of the bar of candy selected by the purchaser.

(8) Furnishing to wholesale dealers, jobbers, and retail dealers, devices commonly referred to as punch boards, having printed thereon legends informing 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¢, respectively, depending upon the price stated on the punch slip which is selected by the purchaser from said punch board.

(b) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 5¢, or will be obtained free of charge depending upon the price stated on the punch slip which is selected by the purchaser from such punch board.

It is further ordered, That the respondent, Ucanco Candy Company, 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.

Syllabus

IN THE MATTER OF
WALTER H. JOHNSON CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1817. Complaint, June 20, 1934¹—Decision, Nov. 5, 1934*

Where a corporation engaged in manufacture and sale of candy, including four so-called "break and take" assortments, with explanatory display cards, composed of (1) forty bars of uniform quality, size, and shape, within the individual wrappers of which there was concealed a slip containing thereon "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, (2) forty-eight bars of uniform quality, etc., within the individual wrappers of which there was concealed a slip containing the figure "1¢", "2¢", or "3¢", as the price to be paid, as above set forth, (3) forty bars of candy, within the wrappers of ten of which there was concealed a slip bearing the word "free" and entitling the chance purchaser to such piece without payment of the 5 cents charged the purchasers of the other thirty bars; and (4) one hundred and fifty individually wrapped penny caramels, together with larger pieces to be given as prizes to chance purchasers of fifty-five of said penny pieces, the concealed centers of which were white;

Sold said various assortments and display cards so packed and assembled that they might and would be resold through such lottery or gaming devices, and could not be sold otherwise, without unpacking, disassembling, and rearranging the same to wholesalers, jobbers, and retailers, with knowledge that they would thus be resold to the consuming public, by lot or chance, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers, who sell candy by such methods, with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result that some of its competitors, who can compete on even terms only through following such practices to meet the growing demand for candy thus sold from small retailers near schools, and the preference of the largest class of purchasers and consumers of such candy, i. e., the children, were put to a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the former, to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, gambling by children was taught and encouraged, and sales of so-called "straight goods" type with their larger pieces or better quality were decreased by the competition, principally, of the gambling or lottery feature connected with the other:

¹Amended and supplemental.

Complaint

19 F. T. C.

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

Mr. Henry C. Lank for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission heretofore on the 2nd day of May A. D. 1930, charged that Walter H. Johnson Candy Company, a corporation, hereinafter referred to as respondent, has been and was using unfair methods of competition in interstate commerce, in violation of Section 5 of said Act, and among its charges in that respect stated that respondent was then and for more than four years last past has been engaged in manufacturing candy, and selling and distributing said candy by three sales plans involving the use of a lottery or the distribution of candy by lot or chance.

Complaint aforesaid having been duly served upon respondent and respondent's answer duly filed, the matter proceeded to hearings which were had, and evidence was thereupon introduced on behalf of both the Commission and respondent before an examiner of the Federal Trade Commission theretofore duly appointed. During the course of the testimony on behalf of the Commission, it was adduced that respondent for more than one year theretofore past, and at the time of said hearings, was using a fourth sales plan by which its candy was sold and distributed to the consumer by a lottery, or by lot or chance. At the time of admitting said testimony, due notice was given by counsel for the Commission of a motion to amend the complaint in such manner as would conform to the aforesaid evidence and it was agreed by counsel for the Commission and counsel for the respondent that upon the conclusion of the taking of testimony that an amended complaint would be offered for filing, and counsel for the respondent waived its right to file answer thereto, and further agreed that the answer filed to the original complaint might stand as an answer to the amended complaint. Upon consideration of the premises and the aforesaid motion, the Commission now brings this, its amended and supplemental complaint, alleging and charging as follows, to wit:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place

Complaint

of business located in the city of Chicago, State of Illinois. It is now and for more than four 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 Chicago, State of Illinois, 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 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) Certain of said assortments of candies are composed of a number of candy bars of uniform size, shape, and quality and each of said bars is contained within a wrapper. The said bars of candy retail at the price of 5 cents each, but ten of the 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 wrapper. The aforesaid purchasers of said bars of candy who procure a bar of candy 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, therefore, is thus determined wholly by lot or chance.

(b) Certain of said assortments of candy are composed of a number of candy bars 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 prices 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 the 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.

(c) Certain of said assortments of candy are composed of a number of bars of candy of uniform size, shape, and quality and

Complaint

19 F. T. C.

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 uniform size, shape, and quality 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 caramel candies of uniform size, shape, and quality, together with a number of 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 majority of the said caramel candies in said assortments are of the same color throughout, but a small number of said caramel candies have white centers. 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 white center are entitled to receive, and are to be given free of charge, one of the said larger pieces of candy hereinbefore referred to. The aforesaid purchasers of said candies who procure a candy having a white center thus procure one of the said larger pieces 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, 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 candies of respondent's competitors because of (a) the chance of obtaining certain bars of candy free of charge

rather than at the price of 5 cents each, or, (b) the chance of obtaining one of said bars of candy at a price of 1 cent or 2 cents rather than at the maximum price of 3 cents, or, (c) the chance of obtaining one of said bars of candy at a price of 1 cent, 2 cents, 3 cents, or 4 cents rather than at the maximum price of 5 cents, or, (d) the chance of obtaining said larger pieces 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 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 and served a complaint and an amended and supplemental complaint upon the respondent, Walter H. Johnson Candy Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer to the original complaint and it was agreed that such answer might stand as an answer to the amended and supplemental complaint. The case was set down for the taking of testimony before an examiner of the Commission and evidence was offered by counsel for the Commission and by counsel for the respondent.

Thereupon, this proceeding came on for hearing on the briefs of counsel for the Commission and for the respondent and upon the record. The Commission, now having considered the matter 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 H. Johnson Candy Company, is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and for more than eight years last past, has been engaged in the manufacture of candy in Chicago, Ill., and in the sale and distribution of said candy to wholesalers and job-

bers in the State of Illinois 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 Illinois to purchasers thereof in Illinois and in the States of the United States other than the State of Illinois. 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. Among the candies manufactured and sold by respondent was an assortment of candy consisting of forty candy bars of a uniform quality, size and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, 3¢, 4¢, or 5¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 3. Another package of candy manufactured and sold by respondent consisted of forty-eight candy bars of a uniform quality, size and shape, and with each of said candy bars contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectively concealed from the consumer until he had removed the said wrapper. The retail prices printed on said slips were 1¢, 2¢, or 3¢, and these were the prices which the consumer paid the retail merchant. The ultimate consumers thus procured 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.

PAR. 4. The respondent also manufactured and distributed an assortment of candy consisting of forty bars of candy with each of said bars of candy contained within a wrapper. Within the wrapper of ten of said bars of candy was a slip of paper stating that the bar of candy was *free*, the other thirty bars of candy to be retailed at a price of 5 cents each. The said slips of paper bearing the statement that the bar of candy was free were effectively concealed from the consumer until he had made his selection and removed the wrapper. Whether the ultimate consumers procured a bar of candy

free or paid 5 cents for it was thus determined wholly by lot or chance.

PAR. 5. In each of said assortments as described in paragraphs 2, 3, and 4 above, was fastened a display card bearing legends printed thereon stating that the bars of candy were being sold by the methods above described (Com. Exs. 1, 2, 7, and 11a).²

PAR. 6. Subsequent to the issuance of the complaint, but prior to the taking of testimony herein the respondent has been manufacturing and distributing assortments of candies composed of a number of pieces of caramel candy of uniform size, shape and quality, together with a number of 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 majority of the said caramel candies in said assortments are of the same color throughout, but a small number of said caramel candies have white centers. The said pieces of caramel 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 the said pieces of caramel candy of uniform size, shape, and quality having a white center are entitled to receive and are given free of charge, one of the said larger pieces of candy hereinbefore referred to. The pieces of caramel candy of uniform size, shape, and quality are contained within a wrapper and the color of the center is effectively concealed from the prospective purchaser until after a selection has been made and the wrapper removed. The aforesaid purchasers of said candy who procure a candy having a white center thus procure one of the said larger pieces of candy wholly by lot or chance. The assortment as above described, which respondent was distributing at the time of the taking of testimony contained 150 pieces of caramel candy retailing at 1 cent each, 55 of which had white centers and were prize winners.

PAR. 7. Subsequent to the issuance of the complaint herein, but prior to the taking of testimony herein, the respondent discontinued the manufacture and distribution of the assortments of candy described in paragraphs 2, 3, and 4 of these findings. The respondent did, subsequent to discontinuing the above assortments, begin the distribution of the assortment described in paragraph 4 of these findings, but had again discontinued the manufacture and the distribution thereof prior to the taking of the testimony in this case. This Commission, however, has no assurance that the respondent will not again begin the manufacture and distribution of these several assortments.

² Not published.

PAR. 8. The lottery, prize, or draw packages described in paragraphs 2, 3, 4, and 6 above, are generally referred to in the candy trade or industry as "break and take" packages. The packages or assortments of candy without the lottery, prize or draw features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 9. Numerous retail dealers purchase the packages described in paragraphs 2, 3, 4, and 6 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display said packages for sale to the public as packed by the respondent, and with the display card furnished by the respondent, and the candy contained in said packages is sold and distributed to the consuming public in the manner suggested by respondent.

PAR. 10. All sales made by respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber, or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the display card enclosed in each package without alteration or rearrangement. An examination of the packages or assortments of candy described in paragraphs 2, 3, 4, and 6 herein, as packed, assembled, and sold by respondent, shows that said packages or assortments can not be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said packages or assortments.

In the sale and distribution to jobbers and wholesale dealers, for resale to retail dealers, of packages and assortments of candy assembled and packed as described in paragraphs 2, 3, 4, and 6 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described, so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 11. The sale and distribution of candy by the retailers by the methods described in the findings as to the facts herein, is a sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many com-

petitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children, as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take" method, buy respondent's products and the products of others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

There is a constant and growing demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 12. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break and take" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "break and take" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages

Conclusion

19 F. T. C.

gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 13. The pieces of candy in the "break and take" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy, or the quality of the candy in the "break and take" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" goods, or to compensate for the reduced price at which some of the pieces of candy are sold.

PAR. 14. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages of assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break and take" candy.

PAR. 15. In addition to the assortments described in paragraphs 2, 3, 4, and 6 herein, the respondent manufactures candy which it sells to wholesalers and jobbers without any lottery or chance features. It began the manufacture and distribution of the assortments as described in paragraphs 2, 3, and 4 at the time of its organization in the year 1925 and has continuously, to the time of taking testimony in this case, manufactured some assortments involving the distribution of candy by lot or chance. For the year 1930 respondent's total volume of business was approximately \$1,200,000. Approximately two years prior thereto the "break and take" candy business of the respondent represented about 50 percent of the respondent's total business. This percentage has, however, had a gradual decline and is now approximately 15 percent of the respondent's total volume.

PAR. 16. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States, and some of the said States have laws making lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, Walter H. Johnson Candy Company, 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 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 upon amended and supplemental complaint of the Commission, the answer of the respondent, the testimony taken and the briefs filed, 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, Walter H. Johnson Candy Company, 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 to be made or may be made 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.

(4) 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, some of which contain within their wrappers tickets bearing the price of 5 cents, and others containing within their wrappers tickets stating that the particular bar of candy is free.

(5) 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 centers of a 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.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(7) Furnishing to wholesale dealers, jobbers and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 1¢, 2¢, 3¢, 4¢, or 5¢, respectively, depending upon the price tag enclosed in the wrapper of 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¢, or 3¢, respectively, depending upon the price tag enclosed in the wrapper of the bar of candy selected by the purchaser.

(c) That certain bars of candy of uniform size, shape, and quality will be obtained for a price of 5 cents, or will be obtained free of charge, depending upon the printed wrapper 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 that a larger piece of candy will be given free to said purchaser.

It is further ordered, That the respondent, Walter H. Johnson Candy Company, 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
ODORA COMPANY

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

Docket 2166. Complaint, Mar. 15, 1934—Decision, Nov. 5, 1934

Where a corporation engaged in the manufacture of kraft corrugated, permeable cardboard receptacles such as closets and chests, and in the sale thereof, knocked down, to retail dealers and jobbers, for resale to the public, for use, set up, for storage of clothes, etc., in substantial competition with sellers of such effective storage receptacles for moth protection as tight cabinets or chests containing in the body proper at least 70 percent of $\frac{3}{4}$ -inch red cedar wood, and with sellers of tight storage receptacles of cardboard or heavy paper, garment bags, and other articles for similar purposes,—

Marked, branded, and represented its aforesaid closets and chests as "cedarized" and so sold the same to dealers, by whom they were thus designated and sold to the public, and represented in advertisements which it circulated throughout the United States among dealers and purchasers and prospective purchasers, and which it encouraged dealers to publish, and to the expense of which latter advertising it contributed, that the so-called cedar retainers, or "cedarizers", which contained oil of cedar and were enclosed within its said receptacles, gave forth a pungent cedar vapor guaranteed to be continuous for a year, with assurance of lasting protection from moths to articles stored therein, through providing an atmosphere obnoxious to the flying and egg-laying forms of moth life, and that the public could trust said receptacles like cedar walls, by reason of said fact and the fact that they were dust-proof, damp-proof and insect-proof, and that if clean garments were placed therein infestation or moth damage would not occur;

The facts being that they were neither dust-proof, damp-proof, moth-proof, nor moth-deterrent, and that the so-called cedar retainers, or strips of absorbent paper sprayed with a cedar oil combination, contained only a small fraction of the amount of such oil necessary for the vapor therefrom to act as a fumigant in substantially airtight cedar chests in destroying the destructive moth larvae, as was also true of its so-called "cedarizers", or small receptacles within which such oil, cedar shavings, and other substances were stored, and that the loose joints of said receptacles, set up, permitted the evaporation of a large part of the oil in said retainers even before reaching the consuming public, and permitted the entry of air, dust and moths;

With effect of deceiving and misleading the public through said representations made by it and its dealers, into the belief that its said receptacles had the qualities pertaining to wood cedar chests by reason of the oil included therewith, as above set forth, and would retain said characteristics during the time articles subject to damage from moths were stored therein, and that they were damp-proof, dust-proof, and moth-proof, and could not be entered by moths when used for storage purposes, and into purchasing the same in reliance upon such beliefs, instead of the aforesaid much more costly wood cedar chests, or other storage receptacles of competitors, and thus diverting trade to it from competitors:

Complaint

19 F. T. C.

Held, That such practices, under the circumstances 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.

Mr. Robert Watson, of Washington, D. C., and *Mr. Israel B. Oseas*, of New York City, for respondent.

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 Odora Company, hereinafter referred to as respondent, has been, and now is, 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 states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Odora Company, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 140 West Twenty-second Street, in the City of New York.

PAR. 2. The respondent is engaged, and for some time past has been engaged, in the manufacture of chests made of cardboard material for the storage of blankets, clothing, and other household effects subject to the ravages of moths, which chests are and have been sold by respondent and shipped from its place of business in the State of New York to dealers in other States of the Union.

PAR. 3. That there are in the United States, and were at all times herein mentioned, manufacturers of chests made of cedar wood, in whole or in large part, for storage of blankets, clothing, and other household effects; manufacturers of storage chests made of wood and other materials other than cedar wood; that these manufacturers sell and ship their chests from their respective places of business to dealers located in various States of the Union other than the States of the respective manufacturers.

PAR. 4. That the respondent in its said sales is in substantial competition with the other manufacturers hereinabove mentioned.

PAR. 5. That in offering for sale and selling its said storage chest respondent designates, marks, and advertises it as "cedar chest"; "cedarized chest"; "Odora cedar-fold chest"; "the chest with the cedar retainer"; and represents that it is "the only chest that can feature the year guarantee of continuous cedar-vapor. The patented retainer (an exclusive feature) loaded at our plant with pungent

ever-fresh cedarized moth killer, offers assurance of lasting protection"; represents that it is "moth proof", "damp proof", "dust proof"; that it "will absolutely kill all moths and moth eggs if present when garments are stored"; and that the moth-proof construction of the chest will keep moths out; and by other words and methods represents that said storage boxes and chests will preserve clothing and other such household effects against the ravages of moths.

PAR. 6. That in truth and in fact respondent's storage chests are not of such construction as to be dust-proof and damp-proof; said boxes and chests are not "cedarized" as that word is generally understood by dealers and the public; they contain no cedar wood in their make-up but are of cardboard or other paper fibre; they contain no element or elements or material that is, or would be, moth deterrent or that would cause the destruction of moths or moth eggs; and are not of such construction as to keep out moths.

PAR. 7. That for a long time chests made of cedar wood in whole or in large part have been and are known to and used by the public as protection against the ravages of moths, by excluding them from materials therein stored which were not infested at the time of storage, and/or by destroying such as infested the materials at the time of storage or that gained entrance after storage; that the manufacturers of storage chests not made of cedar, mentioned in paragraph 3 hereof, truthfully represent and have represented their chests and have refrained from representing that they are deterrent to, or destructive of, moths.

PAR. 8. That respondent's false advertisements and misrepresentations to dealers as hereinabove set out has deceived such dealers and has caused them to repeat and pass on such misrepresentations to the using public; that in advertisements dealers have designated them as "cedarized chests"; have represented that they would kill all moths and moth eggs if present when garments were stored; have represented the chests to be of moth-proof construction that would keep moths out; and that the patented "cedarizer" contained in said boxes and chests would kill moths and destroy their eggs, and by other words and means have passed on to the public the misrepresentation, and have led the public into the belief that respondent's boxes and chests afforded protection against the ravages of clothes moths.

PAR. 9. That said false marking, false designation, and misrepresentations have been, and are, unfair and injurious to those competitors of respondent who sell storage chests made in whole or in large part of cedar wood and that are truthfully represented as

moth repellent and moth destructive as well as unfair and injurious to those manufacturers who make and sell storage chests not of cedar wood and which they do not represent to be moth repellent and moth destructive; and are prejudicial to the using public, 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.

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 respondent charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced, on behalf of the Commission and the respondent, before an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for final hearing upon the briefs filed on behalf of the Commission and the respondent, and upon oral argument of counsel for 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 the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Odora Company, is a corporation organized in or about the year 1928 under the laws of the State of New York, and having a place of business at 140 West Twenty-second Street, New York City.

PAR. 2. The respondent is engaged, and has been engaged, at all times since in or about the year 1931 in the manufacture and in the sale of cardboard storage receptacles, closets, and chests, which it regularly sells to retail dealers and jobbers for resale through them to members of the public for the storage of clothing and other materials.

PAR. 3. The respondent, during all the times since in or about the year 1931, has sold its storage receptacles, closets, and chests, mentioned and referred to hereinafter, to retail dealers and to whole-

sale dealers or jobbers in such articles, purchasers thereof, located in the District of Columbia and in the various States of the United States other than New York, for resale through the dealers to members of the public, users thereof, and the respondent has caused its storage closets and chests, when so sold by it, to be transported from New York, or from the State of origin of the shipment thereof, to, into, and through the District of Columbia and States other than New York, or the State of origin of the shipment, to the purchasers. The respondent's storage receptacles were resold to the public during said times, the chests at about 69 cents each and the closets at about \$1.29 each.

PAR. 4. During all the times mentioned in paragraph 3 hereof, other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, are and have been engaged in the business of the sale of various receptacles used in the storage of clothing and other materials, such as garment bags, boxes, closets, cabinets, and chests to retail dealers and to jobbers or wholesale dealers for resale through them to members of the public. The sellers have, respectively, caused their storage receptacles, when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to, into, and through the District of Columbia and other States, to the purchasers.

Some of the sellers, during the times above mentioned, were engaged in the sale of and sold storage receptacles, which they sold to the dealers above referred to at various prices from \$5 upward, each, and which were resold to the public at retail at various prices from \$10 upward, each, including boxes, closets, cabinets or chests made of wood, in various sizes, which contained in the body proper of the box, cabinet or chest (top, sides, and bottom) at least 70 percent of $\frac{3}{4}$ -inch red cedar wood, and from that amount up to 100 percent of red cedar wood; and some of the sellers were engaged in the sale of and sold cardboard storage boxes, closets, and chests in various sizes; and others of the sellers sold garment storage bags made of heavy paper.

PAR. 5. The respondent, during all the times referred to in paragraph 4 hereof, has been and still is in substantial competition in interstate commerce in the sale of its storage receptacles with the sellers, respectively, referred to in paragraph 4 hereof.

PAR. 6. During all the times mentioned in paragraph 3 hereof the respondent's storage receptacles, closets, and chests were made of kraft corrugated cardboard, the closets 60 inches high by 20 inches wide and 15 inches in depth; the chests, 30 inches long by 12 inches

wide and 14 inches deep. Each closet and chest sold by respondent (with the exception of some closets and chests sold by respondent in 1933, to a certain department store in New York City), was provided with a cedar retainer, consisting of a sheet or pad of paper about blotting paper thickness extending over nearly the entire length and about half the width of one of the interior walls of the closet or chest, and covered by a sheet of perforated paper. The paper or pad covered by the perforated paper was sprayed by respondent at its factory, before being sold, with exactly one ounce of an oil compound consisting 85 percent of cedar oil and 15 percent of pine oil.

PAR. 7. The closets and chests sold by respondent in 1933 to the department store referred to in paragraph 6 hereof were provided with a special so-called cedarizer, consisting of a paper carton or box 18 inches by 7 inches by 1 inch, which was glued to an inner wall of the closet or chest and containing, or for the purpose of containing, cedar shavings, paradichlorobenzine, naphthaline, and cedar oil. The cedarizer, when the closets and chests were sold by respondent and by said department store, was covered with cellophane to delay or to prevent evaporation of the materials which it held. Respondent's directions in connection with the use of closets or chests provided with the cedarizer were for the users to remove the cellophane when the closets or chests were put in use for storage purposes.

In 1932 and after 1933 the department store referred to herein sold and now sells respondent's closets and chests provided with the so-called cedar retainer. It sold respondent's closets and chests provided with the so-called cedarizer in 1933, but not before or after 1933.

PAR. 8. The respondent's closets and chests above mentioned were regularly sold by the respondent to retail dealers and to jobbers, folded or knocked down. When the closets and chests were shipped by respondent from its factory to the dealers, each one was regularly, individually wrapped by respondent in heavy kraft paper sealed with gummed tape. So wrapped, they were regularly packed in bundles in corrugated shipping cases and the cases were sealed with gummed tape and bound with string. The shipping cases were used for delivery of the closets and chests from respondent's factory to the dealers. The wrapping around the individual closets and chests was for the purpose of use in the handling of the closets and chests by the retail dealers locally, including delivery to their customers, and it was not intended to be removed until the closets or chests were set up for use for storage. The closets and chests were provided with leather fastening straps and strap fasteners for use in keeping them closed when set up for storage purposes.

PAR. 9. During all the times mentioned in paragraph 3 hereof the cardboard, of which the respondent's closets and chests referred to in said paragraph 3 were made, was permeable to air and to the gas or vapor from cedar and pine oils, which are volatile oils, and the respondent's closets and chests, in the condition in which they were when set up for use, in accordance with the instructions of respondent therefor, for the storage of clothing and other materials by members of the public who purchased them for that purpose, had openings or apertures at their joints or closures sufficiently large to permit freely the entry of moths and air.

PAR. 10. During all the times mentioned in paragraph 3 hereof garment bags and cardboard storage closets and chests referred to in paragraph 4 hereof and sold by the sellers referred to in said paragraph were constructed of heavy paper or cardboard, respectively, which was permeable to air and to gas or vapor from cedar oil, and they were so constructed that they were without openings or apertures sufficiently large to permit the entry of moths, when used for storage of materials.

PAR. 11. During all the times mentioned in paragraph 3 hereof, the boxes, closets, cabinets, and chests referred to in paragraph 4 hereof and sold by some of the sellers referred to in said paragraph, were made substantially airtight, and of red cedar wood in the body proper (top, sides, and bottom), variously, from a minimum of 70 percent of $\frac{3}{4}$ -inch red cedar wood, up to 100 percent of $\frac{3}{4}$ -inch red cedar wood.

PAR. 12. Storage receptacles, garment bags, boxes, closets, cabinets, and chests are used for the storage of clothing and other materials ordinarily for a period of seven months in a year.

PAR. 13. The average life of the clothes moth is from 10 to 14 days. It may not live more than a day, it may live a little over a month, depending on the ease with which it emerges from the cocoon, and the temperature to which the cocoon was exposed. The female moth begins to lay eggs about the first day she emerges from the cocoon, and lays a small number the first day, but reaches her maximum egg laying capacity within a day, which is maintained for a day or two and then the number of eggs laid drops off and after ten days she ceases to lay. Some moths will lay not more than two eggs in a day. An average moth will lay from 50 to 75 eggs in a day, and 100 to 125 eggs is the average total of eggs a moth will lay. From the egg laid by the female moth the larva or worm is hatched and that is the only form of moth life that causes damage to clothing or other stored materials. The length of life of moth larvae varies a great deal according to food, temperature, and humidity, the larva being capable of going into a resting stage for a month, or even for two years.

PAR. 14. The aroma or odor of cedar oil does not act as a repellent so as to prevent moths from entering closed storage receptacles, the interiors of which contain or are impregnated with cedar oil. The aroma or odor has no effect on any stage of moth life. As a fumigant, the vapor from cedar oil will kill young moth larvae, and some of the older larvae, and it will also cause the activity of the older larvae to be suspended.

PAR. 15. In order to be effective upon moth larvae as a fumigant, cedar oil, or other volatile oils or chemicals, must be held in a practically airtight container in order that the evaporating gas or vapor be confined and sufficient concentration of the gas or vapor accomplished.

PAR. 16. Evaporation of cedar oil from red cedar boards, varying in thickness from three-fourths inch to one-twentieth inch, or thin veneer, progresses in proportion to the thinness of the board.

Over a period of four months three-fourths inch red cedar board, exposed freely to the air, loses 13.3 percent of its oil by evaporation; one-half inch loses 16.3 percent; three-eighths inch, 23.3 percent; one-fourth inch, 37.3 percent; one-eighth inch, 38.8 percent; and one-twentieth inch, or thin veneer, 53 percent of its oil.

At the end of two years the loss of oil by evaporation for the same boards freely exposed to the air, is respectively, 30.3, 41.3, 48.6, 59.2, 62.2, and 77.8 percent for the thin red cedar wood veneer.

PAR. 17. A square foot of $\frac{3}{4}$ -inch red cedar board contains approximately 0.9 of an ounce of cedar oil.

The cedar retainer of the respondent's closets and chests, referred to in paragraph 3 hereof, was supplied at the respondent's factory, before the closets and chests were sold and delivered to the dealer purchasers as set forth in said paragraph 3, with exactly one ounce of an oil compound, consisting 85 percent of cedar oil and 15 percent of pine oil.

PAR. 18. When respondent's closets, 60 by 20 by 15 inches in size, are set up for use as receptacles for the storage of materials, the interior surface of the walls (top, sides, and bottom) measures $33\frac{1}{3}$ square feet.

When respondent's chests 30 by 12 by 14 inches in size are set up for use as receptacles for the storage of materials, the interior surface of the walls (top, sides, and bottom) measures 13.16 square feet.

PAR. 19. Wood chests, of the same size and dimensions as respondent's closets (60 by 20 by 15 inches), made with only 40 percent of $\frac{3}{4}$ -inch red cedar board in the body proper (top, sides, and bottom), have approximately $13\frac{1}{3}$ square feet (of the total $33\frac{1}{3}$ square feet of their interior wall surface) of red cedar board. The cedar wood in

such chest contains 12 ounces of cedar oil, or more than 12 times as much cedar oil as the respondent puts in the cedar retainer of its closets.

Wood chests of the same size and dimensions as respondent's chests (30 by 12 by 14 inches) and made only 40 percent of $\frac{3}{4}$ -inch red cedar board in the body proper (top, sides, and bottom) have 5.264 square feet of interior surface of red cedar board, containing 4.737 ounces of cedar oil, or nearly 5 times more cedar oil than respondent has put in its chests.

The wood chests herein mentioned are practically airtight. Nevertheless, notwithstanding the wood in their construction contains the above quantities of cedar oil, the atmosphere therein permits the eggs of clothes moths, which may infest material when stored in the chests, to develop into moth larvae that damage stored material.

PAR. 20. Owing to the nature of the material of which the respondent's closets and chests are and have been made and their loose condition when set up for use as storage receptacles, as set forth in paragraph 9 hereof, evaporation of the oil and of the materials, respectively, with which the so-called cedar retainer and cedarizer used with respondent's closets and chests were supplied, was very rapid, and the oil and materials were quickly dispersed in the form of vapor or gas and escaped from the interiors of the closets and chests into the outer air. In one instance, for example, one of respondent's closets, on the day it was purchased from respondent's retail distributor enclosed in the sealed wrapper in which it left respondent's factory, had only 2.154 grams of oil remaining in its cedar retainer, or 0.076 of the ounce of oil with which its cedar retainer was furnished at respondent's factory. In other words, there was present in the closet, on the day it was sold, less than one thirteenth of the ounce of the oil with which its cedar retainer was originally supplied by respondent at the factory.

PAR. 21. Storage receptacles, however, closets, cabinets, and chests, made of wood, practically airtight, and containing in the body proper (top, sides, and bottom) as much as 70 percent of $\frac{3}{4}$ -inch red cedar wood, furnish an atmosphere within them that does not permit the eggs of clothes moths in such storage receptacles to develop into larvae which can cause damage to stored material and later develop into clothes moths. Such storage receptacles, by tests and by experience with their use as storage receptacles, have been definitely established as efficient preventives of moth damage to clothing and other materials stored in them.

PAR. 22. For more than 25 years last past manufacturers in the cedar wood chest industry in the United States have produced and

sold, in interstate commerce, storage receptacles made in part or entirely of red cedar wood, and marked, branded or otherwise described and advertised as cedar chests, cedar closets and cedar cabinets when offered for sale and when sold.

PAR. 23. On December 2, 1932, the industry, engaged in the United States in the manufacture of cedar wood chests, held a trade practice conference under the auspices of the Federal Trade Commission, to consider, among other things, the prevention of the practice in the sale of wood chests in interstate commerce, of representing such chests as cedar chests, when they contained in their body proper only cedar veneer, or cedar wood of only $\frac{1}{20}$ inch in thickness, and the said industry made and passed the resolutions or rules mentioned and referred to in paragraphs 24 and 25 hereof.

PAR. 24. On May 12, 1933, the Federal Trade Commission issued an official statement to the effect, among other things, that the rules as adopted by the industry at the trade practice conference mentioned in paragraph 23 hereof, and as set forth in Group I of the Commission's official statement, were approved and accepted by the Commission.

PAR. 25. Among the rules of the trade practice conference of the cedar chest industry, referred to in paragraph 23 hereof, and contained in Group I of the Federal Trade Commission's official statement, are rules 1, 2, 3, and 14, as approved by the Federal Trade Commission, as follows:

Rule 1.—The use in advertising, selling, or offering for sale of such expressions as "moth proof", "moth killing", "moth repelling", "cedarized", or similar misleading representations, in describing any cedar chest, cedar container or cedar receptacle which is not tightly constructed and which does not contain in the body proper (top, sides, ends, and bottom) at least 70 percent of three-quarter inch red cedar (*Juniperus virginiana*), is an unfair trade practice.

Rule 2.—The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 3.—The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers or prospective purchasers with respect to the quantity, quality, grade, substance or moth-killing or moth-repelling properties of the goods purchased, is an unfair trade practice.

Rule 14.—Advertising, selling, or offering for sale as cedar chests, cedar containers, or cedar receptacles, chests, containers, or receptacles which contain in the body proper (top, sides, ends, and bottom) more than 30 percent by weight of wood or woods other than cedar (*Juniperus virginiana*) is an unfair trade practice.

Since on or about the year 1932 all of the said manufacturers in the cedar wood chest industry have made such storage receptacles from red cedar wood with a minimum of 70 percent (top, sides, and bottom) of $\frac{3}{4}$ inch red cedar wood.

PAR. 26. The cedarizer mentioned in paragraph 7 hereof, lost, during a short period of exposure, most of its active ingredients by evaporation and the closets and chests sold by respondent provided with the cedarizer, mentioned in said paragraph 7, were poorly constructed, had open spaces at the top, bottom, and sides, permitting ingress of dust, dampness and insects, and loss by evaporation of the chemical compound contained in the cedarizer. The respondent's closets and chests, provided with the cedarizer, were not dust-proof, damp-proof nor moth-proof.

PAR. 27. The respondent during the times mentioned in paragraphs 3, 23, and 24 hereof, circulated advertisements throughout the United States among dealers, purchasers, and prospective purchasers of its closets and chests for resale to the public, in which respondent featured the cedar retainer of the closets and chests, and stated and represented both directly and indirectly that the closets and chests were moth repellent, and dust proof, and that they protected stored articles from damage by moths. The respondent, in its advertisements, suggested to the dealers that they use in their own advertisements the advertising matter circulated among them by respondent.

PAR. 28. The respondent during the times referred to in paragraph 27 hereof offered and made an allowance in money to dealers to be used to defray in part the expense of advertising respondent's closets and chests, and the respondent also furnished the dealers, upon their request, with advertising mats to be used in reproducing in the dealer's advertisements illustrations or pictures of respondent's closets and chests.

PAR. 29. The respondent, and dealers to whom respondent sold its closets and chests for sale at retail to the public, published advertisements in newspapers which were circulated among the public in various States and contained statements and representations to the effect, among others, that the cedar retainer of respondent's closets and chests gives forth a pungent cedar vapor continuously; that the cedar vapor from the cedar retainer was guaranteed to be continuous for a year; and that the cedar retainer offered assurance of lasting protection to articles stored in the closets and chests; that the cedarizer above mentioned keeps the moths at bay and kills moths and their eggs if present when garments are stored in the closets and chests; and that the members of the public purchasing the closets

Findings

19 F. T. C.

and chests can trust their clothes to the closets and chests because they are dust proof, damp proof, insect proof, cedarized affairs, just as they would trust their clothes to real cedar walls; that respondent's closets and chests provided an atmosphere therein obnoxious to the flying and egg-laying form of moth life and that if clean garments were placed within the closets and chests infestation or moth damage would not occur; and that the cedar retainer and cedarizer of the respondent's closets and chests was saturated with a moth preventive that contains oil of cedar, something that moths abhor and that keeps the moths at bay.

The respondent, as set forth in paragraph 3 hereof, sold its closets and chests, marked, branded and represented by it as "cedarized" closets and "cedarized" chests, and the dealers who purchased the closets and chests from respondent, in their advertisements above mentioned, in turn, represented the respondent's closets and chests as cedarized closets and chests.

PAR. 30. The respondent's closets and chests above mentioned were not dust proof, damp proof, or moth proof. The cedar retainer and the cedarizer with which the closets and chests were provided did not deter or prevent moths from entering them when they were set up and used for storage of materials. The closets and chests were loosely constructed, and were not airtight. When set up for use for storage purposes, according to the instructions of respondent, there were apertures at their joints or closures which permitted the access of moths and air to their interiors and the escape of vapor or gas from the cedar oil compound with which they were treated or supplied. They did not provide an atmosphere within them which prevented moths from laying eggs therein or prevented moth eggs, present in garments or other materials when stored, from hatching into moth larvae, which cause moth damage to garments or other stored articles. The cedar oil and other oils and chemicals in the said cedar retainer or cedarizer did not affect moth larvae in the closets and chests so as to dull their activity and prevent damage by them to materials stored in the closets and chests, and the representations mentioned and referred to in paragraph 29 hereof, made in advertisements by respondent and dealers to the public, were false.

PAR. 31. By means of marking or branding its closets and chests as cedarized closets and chests, and by means of the representations made by respondent and dealers as set forth in paragraph 29 hereof, the respondent and said dealers deceived and misled members of the public into the belief that respondent's closets and chests had the qualities and characteristics belonging to wood cedar chests by

315

Order

reason of the cedar oil in the respondent's closets and chests; into the belief that respondent's closets and chests would retain those qualities and characteristics during the time articles subject to damage by moths were stored in them; into the belief that the said closets and chests were damp proof, dust proof and moth proof, and that moths could not enter them when they were closed and in use as storage receptacles; and relying upon such belief into purchasing the respondent's closets and chests for the storage of materials subject to moth damage instead of purchasing storage receptacles, including wood cedar chests, cardboard chests, and cardboard or paper moth bags sold by respondent's competitors. The respondent's said representations and practices and the said representations and practices of the dealers referred to above, which the respondent caused them to make, thus diverted trade from respondent's competitors.

CONCLUSION

The practices of the respondent, Odora Company, and of the dealers above mentioned, which the respondent caused the said dealers to make, under the conditions and circumstances described in the foregoing findings, were to the prejudice and injury of respondent's 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."

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 to the complaint, testimony and evidence introduced, upon the briefs of counsel for the Commission and for the respondent, and upon oral argument on the part of counsel for the Commission and the respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent, Odora Company, 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 Odora Company, its officers, agents, and representatives, in connection with the sale and offering for sale; in interstate commerce between and among the several States of the United States and in the District of Columbia, of cardboard receptacles in the form of closets, chests or cabinets designed

Order

19 F. T. C.

or intended for use by members of the public for the storage of household effects, clothing, or other cloth material, do cease and desist from:

(1) Marking, branding, or otherwise designating or describing such cardboard storage receptacles, or any part or accessory to the use thereof, with the word "cedar", or with any form of derivative of the word "cedar", such as the word "cedarized", either alone or in association with any other word or words;

Unless and until such cardboard receptacles shall be so constructed and be so provided with cedar oil, that, when used for storage, they—

(a) will not afford access to clothes moths to stored materials, and

(b) will, when closed, cause and maintain within them concentration of the vapor or gas from the cedar oil sufficient, as a fumigant, during any part of the storage period of seven months immediately following their sale by a respondent's distributor, to kill young moth larvae within a reasonable time after articles infested with them are deposited therein during such storage period;

(2) Using the word "cedar" or any form or derivative of the word "cedar", such as the word "cedarized", either alone or in association with any word or words in advertisements in newspapers, circulars, or other publications, or verbally, to designate or to describe such cardboard storage receptacles, or any part or accessory to the use thereof;

Unless and until such cardboard receptacles shall be constructed and be provided with cedar oil and effective thereby as above set forth;

(3) Representing to dealers or others or causing it to be represented by dealers or others to members of the public, directly or indirectly, either verbally or in advertisements in newspapers, circulars, or other publications, or by means of the radio, that clothes moths, or their eggs, or moth larvae, which may infest articles stored therein, will be killed, or that their activities with respect to moth damage to such articles will be delayed or suspended by reason of any oil or oils, or chemicals with which such cardboard receptacles may be provided;

Unless and until such receptacles shall be so constructed and concentration of the vapor or gas from the oil or oils, or chemicals with which they are provided shall be maintained within them when used for storage as and to the same effect as set forth in paragraph 1, subdivision (b) of this order;

(4) Representing to dealers or others, or causing it to be represented by dealers, or others, to the public, either verbally or in advertisements in newspapers, circulars, or other publications, or

315

Order

by means of the radio, that such cardboard storage receptacles are dust proof or damp proof; or that they are of a construction that is proof against the access of clothes moths to materials stored in them, unless and until respondent's cardboard storage receptacles shall be in fact so constructed.

It is further ordered, That the respondent, Odora Company, 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 it has complied with this order to cease and desist.

IN THE MATTER OF

MAID-O-BEST, INC., G. M. MOSES, AND MORRIS AVERBACH, TRADING UNDER THE NAME OF THE MURIEL COMPANY

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

Docket 2168. Complaint, Apr. 9, 1934—Order, Nov. 5, 1934

Consent order requiring respondent corporation, its officers, etc., and respondent individuals, their agents, etc., in connection with the advertisement, offer and sale in interstate commerce and in the District of Columbia, of flavoring compounds, foodstuffs, toilet articles, household goods, and novelties, forthwith to cease and desist from—

- (a) Representing by photographs or otherwise that J. M. Gebhardt, a fictitious person, or any other fictitious person, is a director of sales of said corporation, or that it has a national sales organization, until such be the fact;
- (b) Representing that it is a manufacturer of products sold by it until it operates, owns, or controls a factory making said products, or using in advertising the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minnesota, U. S. A." or other words of similar import, until such be the fact;
- (c) Using the term "vanilla extract" to describe a flavoring product, unless made with ethyl alcohol and containing at least 50 percent of true vanilla from the vanilla bean, or representing that its so-called extract has no equal for quality, is the finest available at any price or that it is composed of vanillin and certain other ingredients and a liberal quantity of pure vanilla from the choicest vanilla beans, until a liberal quantity of pure vanilla thus made is actually used in preparation of said substance, as hereinbefore set forth;
- (d) Using words "orange", "lemon", "maple", and "almond" in connection with word "extract", unless product is composed of genuine ingredients suspended in ethyl alcohol, as distinguished from synthetic chemical substitutes;
- (e) Representing or setting forth in connection with its products, sold in combination deals or otherwise, "regular retail prices", which are fictitious and greatly in excess of usual prices for such products, or prices contemplated therefor, and representing to buyers values greatly in excess of the facts, and making other false or misleading representations of similar tenor, including, in substance, that the prices do not afford the seller a profit;
- (f) Representing falsely that a special account of \$3,000 or any other amount is deposited in a bank to cover refunds for returned products, unless and until such a sum be deposited and maintained in liquid form and available for such purposes; and

Ordered further that respondent Averbach, individually and trading as The Muriel Co., his agents, etc., in connection with the advertisement, offer for sale and sale of flavoring compounds, foodstuffs, toilet articles, house-

Complaint

hold goods, and novelties among the several States and in the District, forthwith cease and desist from—

- (g) Representing that it is easy for agents to "earn up to \$15 every day in selling Muriel Company products";
- (h) Designating so-called food flavors as extracts until and unless they are genuine extracts, dissolved and carried in alcoholic solution, and representing cheap and inferior ingredients contained in flavoring preparations as of "high quality" and "purest and finest";
- (i) Representing falsely that he buys his raw materials in "tremendous quantities" and that "greater savings" are thereby "passed on" to housewives of America;
- (j) Representing that the product "Choc-O-Toddy" or any other product is made by said company, until made by him in or by a factory which he owns, operates or controls; or
- (k) Representing or setting forth in case of food flavoring or other products sold in combination deals or otherwise, selling prices to consumers which are fictitious and greatly in excess of those prevailing for similar products, or those contemplated for his said products, and representing retail values greatly in excess of the values of said products, and making false or misleading representations of similar tenor, and, particularly, respecting the value and quality of products sold by him, and importing that said products are sold at prices which do not afford a profit.

Mr. Marshall Morgan for the Commission.

Stacker & Stacker, of St. Paul, Minn., for respondents.

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 Maid-O-Best, Inc., G. M. Moses, an individual, and Morris Averbach, an individual trading under the name of The Muriel Company have been or are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPHS 1. Respondent Maid-O-Best, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at St. Paul, Minn.

Respondent Maid-O-Best, Inc., from August 29, 1932, until March 1, 1933, was engaged in the sale and distribution in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties.

Respondent G. M. Moses, during the period next above stated, was the president of Maid-O-Best, Inc., and directed its activities and controlled the affairs and policy of said respondent corporation.

Respondent Morris Averbach, trading under the name of the Muriel Company, located at 693 Selby Avenue, St. Paul, Minn., has been engaged since 1932 in the manufacture, sale and the offering for sale in interstate commerce of flavoring compounds, food-stuffs, toilet articles, and novelties.

In the course and conduct of their respective businesses respondents, Maid-O-Best, Inc., and Morris Averbach, have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in selling and offering for sale in interstate commerce flavoring compounds, food-stuffs, toilet articles, and household novelties of various kinds.

PAR. 2. In the course and conduct of their respective businesses, as described in paragraph 1 hereof, respondent Maid-O-Best, Inc., acting through and under the direction of G. M. Moses and Morris Averbach, trading under the name The Muriel Company, have offered their products for sale and have sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers, through the medium of traveling salesmen, agents, and solicitors. Said goods are and were shipped in response to orders taken by such traveling salesmen, agents, and solicitors and transported or caused to be transported in commerce among the several States of the United States. As a means of obtaining the services of such salesmen, agents, and solicitors, said Maid-O-Best, Inc., and Morris Averbach cause and have caused advertisements to appear in periodicals having general circulation, and in addition distribute and have distributed circulars containing sales talks and instructions.

In the course and conduct of their said businesses, as hereinafter related, respondents, Maid-O-Best, Inc., and Morris Averbach, have caused various false, deceptive, and misleading statements to be inserted and to appear in said advertising circulars and bulletins so distributed by them. The statements contained in said bulletins and circulars are addressed to and are and have been distributed among salesmen or prospective salesmen, and are intended to be and constitute instructions to them in connection with sales talks to be made to housewives, customers, and consumers throughout the various States of the United States. In this manner the said various false and misleading statements and representations inserted in advertising bulletins and circulars by respondents Maid-O-Best, Inc., and Morris Averbach, trading under the name The Muriel Company, are and have been passed on to the ultimate consumer by respondents' salesmen and representatives and the consuming public have been induced to purchase the goods offered for sale and sold by

Maid-O-Best, Inc., and Morris Averbach trading as The Muriel Company under the erroneous belief that said false and misleading statements and representation were true.

PAR. 3. Respondent Maid-O-Best, Inc., in further connection with the sale and distribution in interstate commerce of the aforementioned products, printed in bulletins and circulars and instructions, a picture of a person supposed to be one J. M. Gebhardt, wherein the alleged Gebhardt was designated as "Director of Sales, Maid-O-Best, Inc.," and he invites prospective salesmen to "join Maid-O-Best's national sales organization without risking one penny", when in truth and in fact the said "J. M. Gebhardt" is a fictitious person so far as Maid-O-Best, Inc., is concerned and the picture printed was instead a picture of G. M. Moses, president and moving spirit of Maid-O-Best, Inc. Said picture and accompanying statements and announcements were and have been used for the manifest purpose of creating the impression upon prospective agents and representatives, who would in turn convey such impression to the consuming public, that Maid-O-Best has and has had a large selling organization, national in scope and character, when such is not the fact.

PAR. 4. In a circular issued by respondent Maid-O-Best, Inc., in furtherance of the sale, in interstate commerce, of Maid-O-Best products the following statements and representations appeared:

(1) Long-established manufacturer makes startling announcement to those who want ready cash; (2) The large manufacturing company back of Maid-O-Best products has made it possible for me to offer you better quality products at much lower resale prices. And of great importance to you is the fact that your margin of profit is a generous one. Every sale repays you handsomely for your efforts; (3) We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities.

Said Maid-O-Best, Inc., further caused to appear in advertising matter distributed in interstate commerce the words:

Manufactured only by Maid-O-Best, Inc., St. Paul, Minn., U. S. A.

When in truth and in fact the said Maid-O-Best, Inc., did not and does not own, operate, or control any mills, factory or laboratory wherein the products which it sells or sold and distributes or distributed in interstate commerce are and were manufactured or compounded, said products on the contrary, having been manufactured or packed by Morris Averbach, trading as The Muriel Company. Maid-O-Best, Inc., is not a long-established manufacturer, concern, or business, has not had any large manufacturing company back of its products, and has not purchased ingredients in tremendous quantities, nor packed the products distributed by it in interstate commerce; said Maid-O-Best, Inc., on the contrary, merely furnishing

Complaint

19 F. T. C.

bottles and labels to Morris Averbach, who, as stated, prepares and has prepared certain quantities of the products which respondent Maid-O-Best has advertised and sold under the name "Maid-O-Best".

PAR. 5. In the further course and conduct of its business Maid-O-Best, Inc., caused advertisements to appear in periodicals and advertising folders having a wide interstate circulation, as follows:

| A \$3.70 VALUE 47 CENTS | |
|---------------------------------------------------|--------------|
| | <i>Value</i> |
| One 8-ounce bottle Imitation Vanilla Extract..... | \$1.00 |
| One 4-ounce bottle Lemon Flavor..... | .60 |
| One 4-ounce bottle Almond Flavor..... | .60 |
| One 2-ounce bottle Orange Flavor..... | .50 |
| One 2-ounce bottle Maple Flavor..... | .50 |
| One 1-pound can Choc-o-Toddy <i>free</i> | .50 |
| | 3.70 |

YOU SELL IT COMPLETE FOR 97 CENTS

5 BIG BOTTLES 47 CENTS

SELLS AT SIGHT FOR 97 CENTS

WITH CAN OF CHOCOLATE TODDY
FREE!

When in truth and in fact the "regular retail prices" as set forth in such advertisements and advertising matter for its flavoring products were and are fictitious and greatly in excess of the prices at which such products were and are sold, or were ever intended or contemplated to be sold in the usual course of trade.

PAR. 6. And said respondent Maid-O-Best, Inc., in its advertising matter and price lists distributed in interstate commerce has used the term "Vanilla Extract" to describe an imitation vanilla flavor, when in truth and in fact such preparation is not a true extract but a cheap flavoring compound, lacking the alcohol content that would be required as a vehicle to carrying the genuine flavoring extract.

And said Maid-O-Best, Inc., in its advertising matter further has stated that "we are particular about the quality of such products as Vanilla beans, Vanillin, Coumarin, Glycerin, Lemon, Maple, Orange, and other commodities that go into the making of our flavorings", and "You cannot tell how good imitation Vanilla extract is until you try it. Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price. Maid-O-Best Vanilla Extract is composed of Vanillin, Coumarin, Caramel color and a liberal quantity of

330

Complaint

pure vanilla made from the choicest vanilla beans", when in truth and in fact said respondent Maid-O-Best, Inc., has not used "liberal quantities" of "pure vanilla" in the preparation of said alleged "extract", nor vanillin made from vanilla beans, and its flavoring compounds designated as "orange", "lemon", "maple", and "almond" are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes, suspended largely in cheap oils or gum emulsions, instead of ethyl alcohol, recognized as the most valuable and desirable vehicle that can be used in dissolving and preserving food flavorings, and said Maid-O-Best, Inc., flavorings in no manner equal or approach the quality and excellence claimed for them in said respondent's advertising matter.

PAR. 7. Said Maid-O-Best, Inc., further has distributed among its agents and prospective agents in various States advertising circulars announcing various combination "Deals" and containing what purported to be regular retail prices for its products compared with its suggested selling price, such as the following:

Maid-O-Best's Deal No. 2 Housewives' Delight

| | Regular retail price | Suggested selling price |
|---------------------------------------|----------------------|-------------------------|
| 8-ounce bottle Vanilla..... | \$1.00 | \$0.49 |
| 8-ounce bottle Pure Lemon Flavor..... | 1.00 | .49 |
| 2-ounce can Black Pepper..... | .10 | .08½ |
| 2-ounce can Cinnamon..... | .10 | .08½ |
| 2-ounce can Mustard..... | .10 | .08½ |
| 2-ounce can Allspice..... | .10 | .08½ |
| | 2.40 | 1.31½ |

A \$2.40 value

You can sell it for 99 cents

Your profit 50 cents

Maid-O-Best's Deal No. 3. In Demand Everywhere!

| | Regular retail price | Suggested selling price |
|---------------------------------------|----------------------|-------------------------|
| 8-ounce bottle Vanilla..... | \$1.00 | \$0.49 |
| 8-ounce bottle Pure Lemon Flavor..... | 1.00 | .49 |
| Box Raspberry Gelatin..... | .10 | .08½ |
| Box Strawberry Gelatin..... | .10 | .08½ |
| Box Cherry Gelatin..... | .10 | .08½ |
| Box Lemon Gelatin..... | .10 | .08½ |
| | 2.40 | 1.31½ |

A \$2.40 value

Sells and repeats for 99 cents

Your profit 50 cents

Complaint

19 F. T. C.

DEAL No. 4

This extraordinary combination deal has proven itself to be a tremendously fast seller. And why not? The deal includes one 12-ounce bottle of Maid-O-Best pure imitation Vanilla Extract selling regularly at \$1.25 and 10 cakes of extra fine quality Fountain of Youth Soap. Sell the combination for 99 cents. You pay Maid-O-Best 49 cents for the complete deal and you pocket 50 cents in clear profit for yourself.

When in truth and in fact the regular retail prices set forth in such advertisements and advertising matter for the products sold by the company in interstate commerce were and are fictitious and greatly in excess of the prices at which such products are sold or were ever intended or contemplated to be sold in the usual course of trade.

PAR. 8. Said Maid-O-Best, Inc., further, in a circular marked "New Big Free Deal * * *", caused the following statements to appear:

Maid-O-Best products are exceptionally fine quality. They are made of purest ingredients—they are guaranteed to you and to your customers—guaranteed that they will give complete satisfaction, otherwise every penny involved in the purchase price of any of the products is cheerfully refunded. This guarantee is backed by \$3,000 of this company's money which has been deposited in a special account in a big banking institution for this purpose. The guarantee is bona-fide, iron clad—it is your protection for those to whom you sell Maid-O-Best products.

Guaranteed quality. Lower prices to you. Lower prices for your customers. \$3,000 guarantee of quality. This is your assurance of success with Maid-O-Best.

Maid-O-Best, Inc., has deposited in a leading banking institution \$3,000 to back up its iron-clad guarantee of customer-satisfaction or money back. If any question as to quality arises in the minds of your customers don't hesitate to give them the Maid-O-Best guarantee. Don't hesitate to mention that the guarantee is backed by money set aside in the bank.

\$3,000 MONEY BACK GUARANTEE

RAMSEY COUNTY
THE STATE OF MINNESOTA } SS.

Personally appeared before me G. M. Moses, president of Maid-O-Best, Inc., of St. Paul, Minn., who being duly sworn, deposes and says that he has deposited \$3,000 as a guarantee fund to refund money for the following purposes, viz:

I guarantee all our flavors and extracts to be the same pure, strong, and delicious food flavors that we have sold for many years. Made from the finest of ingredients and will not freeze out or bake out. I guarantee all flavors and extracts to give equal or greater satisfaction than other makes, regardless of the brand or price. I further guarantee all products in the Maid-O-Best line to give satisfaction the customer has a right to expect. Otherwise, we will cheerfully refund purchase price upon return of goods. We have deposited \$3,000.00 in the Western State Bank of St. Paul, Minn., to back up this guarantee.

330

Complaint

The president, being duly sworn, on oath says he is fully acquainted with the facts stated in the foregoing instrument and fully understands the same and acknowledges the signing thereof to be his own true, voluntary act and deed.

Signed at St. Paul, Minn., County of Ramsey, by the president this first day of October, 1932.

(Signed) G. M. MOSES, *President*
MAID-O-BEST, INC.

In testimony whereof, I hereunto affix my signature and Notarial Seal at St. Paul, Minn., this first day of October, 1932.

(Signed) MARIE H. RYAN.
MARIE H. RYAN, *Notary Public*.

[SEAL]

My Commission Expires March 13, 1936.

THIS GUARANTEE IS LEGAL AND BINDING AND IS YOUR PROTECTION

Read our \$3,000 Money Back Guarantee presented to you and to your customers in an affidavit sworn before a commissioned notary public. This guarantee appears on every sales kit. It is your protection and guarantees your customers greater values for their money.

On the outside of the case is imprinted our money back guarantee. This alone will prove highly effective in making sales.

Whereas, in truth and in fact, respondent Maid-O-Best, Inc., has not retained in the Western State Bank of St. Paul, Minn., in a special account or otherwise, as a fund to guarantee Maid-O-Best products and to refund purchase price of the same upon the return of the goods purchased, the said sum of \$3,000 or any other sum, but on the contrary, said Maid-O-Best, Inc., withdrew said cash deposit shortly after it was made, substituted bonds therefor and then withdrew said bonds. Said representations in connection with said guarantee fund are and were further false and misleading in fact in that the flavoring products manufactured by Maid-O-Best, Inc., are not and have not been made from the purest ingredients, and are not and never were pure, strong and delicious.

PAR. 9. In the course of its dealings with Morris Averbach, trading as The Muriel Company, said respondent Maid-O-Best, Inc., became indebted to Morris Averbach for goods purchased from him. Satisfactory progress not being made by Maid-O-Best, Inc., in its business, nor in the matter of the payment of the debt due Morris Averbach, G. M. Moses resigned as president of Maid-O-Best, Inc., gave up such business, and it was taken over in January 1933 by Morris Averbach. Although Maid-O-Best, Inc., has retained its corporate existence, such respondent company has vacated its former place of business and G. M. Moses, its former president, has moved

Complaint

19 F. T. C.

over to the premises of The Muriel Company, where he now has office space and is operating as owner of Superwear Hosiery Company. Said G. M. Moses, upon his removal to the premises of The Muriel Company, which had formerly manufactured the products advertised and sold by Maid-O-Best, Inc., turned over and delivered to said Morris Averbach the mailing lists, advertising matter, including cuts, and other properties of Maid-O-Best, Inc.

Since the early part of the year 1933, Morris Averbach, trading under the name of The Muriel Company, has been manufacturing and selling in interstate commerce flavoring compounds and other products of the same kind and character as those theretofore manufactured for and sold by Maid-O-Best, Inc. All flavoring or other products are now made by Morris Averbach, trading as the said Muriel Company, under the same formulae as when Maid-O-Best, Inc., sold them, and are the same in all respects. The said Morris Averbach, trading as The Muriel Company, now uses in connection with the advertising, sale and offering for sale of its products in interstate commerce, the same cuts and advertising matter, periodical and otherwise, which had been theretofore employed, as herein alleged, by Maid-O-Best, Inc., in connection with the false and misleading advertising and sale of Maid-O-Best products in interstate commerce. Said Morris Averbach, trading as The Muriel Company, further has now, and for more than a year last past, has been using "Maid-O-Best" as a trade mark on products sold by him and in advertising and offering said products for sale.

In the course and conduct of his business, Morris Averbach, trading as The Muriel Company, caused the following statements and representations to be printed and circulated in advertising matter intended for and distributed in interstate circulation:

Amazing way to earn big pay.
Up to \$15 every day is easy.
Here's the best of its kind.
Here's big money for you every day.
Sensational food flavoring extract deals.

DECLARATION OF POLICY

The Muriel Company dedicates this book of super-values to the thrifty housewives of America. * * * All our carefully tested products conform with all State and Federal Pure Food Laws. Nothing but the purest and finest of ingredients are used in the manufacture of our products.

We sell all over the United States in large quantities, therefore our purchasing power is great. Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you.

330

Complaint

The bearer of this book is an authorized representative of The Murial Company, and is prepared to give you at once, service for flavoring extracts, * * * you will notice the 5-bottle deal of extracts illustrated in this book.

HIGH QUALITY FLAVORING EXTRACTS FRESH FROM OUR FACTORY

We present herewith 4 great money-saving combination deals for the purchase of the Maid-O-Best brand of high quality flavorings and extracts.

Only the purest of ingredients are used. * * *

DEAL No. 5

| | <i>Value</i> |
|---------------------------------|--------------|
| One 4-ounce bottle Vanilla..... | \$0.60 |
| One 4-ounce bottle Lemon..... | .60 |
| One 2-ounce bottle Almond..... | .35 |
| One 2-ounce bottle Orange..... | .50 |
| One 2-ounce bottle Maple..... | .50 |
| Total value..... | 2.55 |

5 FLAVORS ALL FOR 79 CENTS

DEAL No. 10

| | <i>Value</i> |
|----------------------------------|--------------|
| One 8-ounce bottle Vanilla..... | \$1.00 |
| One 4-ounce bottle Lemon..... | .60 |
| One 4-ounce bottle Almond..... | .60 |
| One 2-ounce bottle Orange..... | .50 |
| One 2-ounce bottle Maple..... | .50 |
| One pound Choc-O-Toddy Free..... | .50 |
| Total value..... | 3.70 |

5 FLAVORS AND TODDY FOR 97 CENTS

DEAL No. 15

| | <i>Value</i> |
|---------------------------------|--------------|
| One 8-ounce bottle Vanilla..... | \$1.00 |
| One 4-ounce bottle Lemon..... | .60 |
| One 2-ounce bottle Almond..... | .35 |
| One 2-ounce bottle Maple..... | .50 |
| Total value..... | 2.45 |

ALL 4 BOTTLES FOR ONLY 79 CENTS

DEAL No. 20

| | <i>Value</i> |
|-------------------------------------|--------------|
| One 8-ounce bottle Vanilla..... | \$1.00 |
| One 2-ounce bottle Orange..... | .50 |
| One 2-ounce bottle Maple..... | .50 |
| One 4-ounce bottle Hand Lotion..... | .50 |
| Total value..... | 2.50 |

4 BOTTLES FOR ONLY 79 CENTS

Complaint

19 F. T. C.

Any 2-ounce size in any of the extract flavoring deals can be replaced
* * *

| Extracts—Food flavors | Regular value | Suggested retail | Extracts—Food flavors | Regular value | Suggested retail |
|-----------------------|---------------|------------------|-----------------------|---------------|------------------|
| | | <i>Cents</i> | | | <i>Cents</i> |
| Vanilla (12-oz.)----- | \$1.25 | 69 | Almond (4-oz.)----- | \$0.60 | 40 |
| Vanilla (8-oz.)----- | 1.00 | 48 | Almond (2-oz.)----- | .35 | 30 |
| Vanilla (4-oz.)----- | .60 | 40 | Orange (2-oz.)----- | .40 | 30 |
| Lemon (8-oz.)----- | 1.00 | 49 | Maple (2-oz.)----- | .40 | 30 |
| Lemon (4-oz.)----- | .60 | 40 | | | |

Choc-O-Toddy manufactured by The Muriel Company is a scientific food concentrate of selected cocoa, skimmed milk, sugar, flavoring, and barley malt extract, ready prepared for a delicious and nourishing chocolate flavored food drink.

When in truth and in fact said statements and representations made by the said Morris Averbach were and are false, deceptive, and misleading in the following, among other particulars:

(1) It is not "easy" nor in fact hardly possible for an agent or representative to "earn up to \$15 every day" nor any day in selling Muriel Company products;

(2) Respondent's food flavors were not and are not "extracts," dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions and oils;

(3) The ingredients contained in respondent's flavoring preparations were and are not "high quality" or the "purest and finest";

(4) Respondent's business is a relatively small one and does not and cannot buy the various raw materials in "tremendous quantities" and thereby effect "greater savings which are passed on" to housewives of America;

(5) The "selling prices" or "values" published in connection with so-called "deals" on flavoring compounds numbered 5, 10, 15, 20, and the "regular values" advertised in order blanks for flavoring compounds were and are fictitious and greatly in excess of the prices at which such flavoring compounds were and are sold or were ever intended or contemplated to be sold;

(6) The said product advertised and designated in advertising matter as "Choc-O-Toddy" and as "manufactured by The Muriel Company" is not and never has been manufactured by The Muriel Company;

PAR. 10. Respondents by such false and misleading advertising in interstate commerce have thereby falsely represented to pros-

330

Order

pective agents that certain of their products were worth and could be sold for a certain retail price, when in truth and in fact, the said products are not, never have been and never were intended to be sold at any such price or prices, have falsely represented in advertising matter the character, contents and value of flavoring preparations, and said Maid-O-Best, Inc., and G. M. Moses have further made false and misleading statements and representations concerning the aforementioned guarantee fund of \$3,000.

By the use of these false and misleading representations appearing in respondents' circulars and other advertising matter, which representations are passed on to the purchasing public by agents and representatives of respondents, the public are thereby deceived concerning the character, quality and value of respondents' products and thereby induced to purchase such products under the erroneous belief that the same are and were of high-grade quality, containing only ingredients of the purity and excellence claimed for them, and of exceptional value, entitled to be quoted at the fancy prices claimed for them, when such were not the facts. In addition, such false and misleading representations divert trade from and otherwise injure competitors of respondents. The aforesaid practices are further to the detriment and injury of manufacturers and/or sellers of products similar to those sold by respondents, and have and have had the capacity and tendency to divert to respondents the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondents. The aforesaid practices of respondents further are detrimental to and tend to demoralize the entire market developed and existing in connection with the business of manufacturing and selling flavoring preparations, are destructive of and create confusion as to proper and honest standards of value, and result in great injury to the business of competitors.

PAR. 11. The above alleged acts and practices done by said respondents, as aforesaid, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the meaning of Section 5 of an Act of Congress to create the Federal Trade Commission, to define its powers and duties, and for other purposes, approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission, on the 9th day of April, 1934, issued and thereafter served a complaint upon the respondents Maid-O-Best, Inc., a corporation, G. M. Moses, an individual, and Morris Averbach, an individual trading

under the name of The Muriel Company, charging them 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:

III. ANSWERS

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that the respondent 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, 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 in the complaint, to waive a hearing thereon, and to authorize 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:

(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 May 14, 1934, the respondents entered their appearance and filed answers to the Commission's complaint of April 9, 1934, admitting certain allegations of said complaint and denying certain others, and thereafter on the 27th day of August 1934 having filed amended answers in which they request permission to withdraw their said original answers theretofore filed on May 14, 1934, and to substitute therefor amended answers to the Commission's complaint herein entered on the 9th day of April 1934 as aforesaid, and in which amended answers they consent that, under paragraph 2 of Rule III of the Commission's Rules of Practice, the Commission may make, enter and serve upon them, and each of them, an order to cease and desist from the methods of competition alleged in said complaint.

Pursuant to its Rules of Practice, the Commission finds that such amended answers are admissions of all the allegations of the complaint, and a waiver of hearing thereon, and authorize the Commission, without trial, without evidence, and without findings as to facts, or other intervening procedure, to make, enter, issue and serve upon respondents an order to cease and desist from the violations of law alleged in the complaint.

The Commission having duly considered the said amended answers and being fully advised in the premises:

Now, therefore, it is hereby ordered, That the said requests to withdraw the said original answers and substitute therefor the said

amended answers be and the same are hereby granted and that the said amended answers be and same are hereby filed in substitution therefor.

And it is further ordered, That the respondent Maid-O-Best, Inc., a corporation, its officers, agents, servants, and employees and respondent G. M. Moses individually and his agents, servants, and employees, in connection with the advertising, offering for sale and sale in interstate commerce and in the District of Columbia, of flavoring compounds, foodstuffs, toilet articles, household goods and novelties forthwith cease and desist from:

1. Representing by photographs or in any other way that J. M. Gebhardt, a fictitious person, or any other fictitious person is a director of sales of Maid-O-Best, Inc.

2. Representing that Maid-O-Best, Inc., has a national sales organization until and unless said Maid-O-Best, Inc., actually has and maintains a selling organization through and by which sales are made by said Maid-O-Best, Inc., generally throughout the United States.

3. Representing that said Maid-O-Best, Inc., is the manufacturer of the products which it sells until and unless said Maid-O-Best, Inc., operates, owns, or controls a factory or factories in which are made the products in which it deals.

4. Using in their advertising matter the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minnesota, U. S. A." or any other word or words of similar import until and unless said Maid-O-Best, Inc., manufactures the products in which it deals, or owns, operates or controls a factory or factories in which said products are made.

5. Using the term "vanilla extract" to describe a flavoring product unless prepared with a vehicle of ethyl alcohol and containing a flavoring content at least fifty per cent of which shall consist of true vanilla made from the vanilla bean.

6. Representing that respondents' so-called vanilla extract has no equal for quality or that it is the finest available at any price or that it is composed of vanillin, coumarin, caramel color and a liberal quantity of pure vanilla made from the choicest vanilla beans unless and until a liberal quantity of pure vanilla, made from vanilla beans, is actually used in the preparation of said alleged extract, the whole suspended or carried in a vehicle of ethyl alcohol.

7. Using the words "orange", "lemon", "maple", and "almond" in combination or connection with the word "extract" until and unless the products is composed of genuine ingredients, as distin-

guished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol.

8. Representing in case of food flavoring or other products, sold in combination deals or otherwise, "regular retail prices" which were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold or were intended to be sold, and representing to buyers values greatly in excess of the values of such or similar products.

9. From making any other false, deceptive or misleading representations of the same or similar tenor and import, particularly representations which import or imply that products are sold at prices that do not afford the seller a profit.

10. Representing that a special account of \$3,000 or any other amount represented to be used to cover refunds for returned Maid-O-Best products is deposited in the Western State Bank of St. Paul, Minn., or in any other financial institution until and unless said sum be actually deposited and maintained on deposit in such bank or other financial institution and there kept available in liquid form for the said purpose.

It is hereby further ordered, That the respondent Morris Averbach individually and trading as The Muriel Company, his agents, servants, and employees, in connection with the advertising, offering for sale and sale of flavoring compounds, foodstuffs, toilet articles, household goods and novelties among the several States of the United States and in the District of Columbia forthwith cease and desist from:

1. Representing that it is easy for agents or representatives to "earn up to \$15 every day in selling Muriel Company products."

2. Designating any so-called food flavors as extracts until and unless they are genuine extracts dissolved and carried in alcoholic solution.

3. Representing that cheap, inferior ingredients contained in flavoring preparations are of "high quality" and "purest and finest."

4. Representing that the said respondent buys his raw materials in "tremendous quantities" and from representing that "greater savings" are thereby "passed on" to housewives of America, until and unless said statements are true in fact.

5. Representing that the product "Choc-O-Toddy" or any other product is manufactured by The Muriel Company until and unless said product is manufactured by said respondent in or by a factory owned, operated or controlled by the said respondent.

6. Representing in case of food flavoring or other products sold in combination deals or otherwise selling prices to consumers which

330

Order

were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold or were intended to be sold, and representing "retail values" greatly in excess of the values of such or similar products.

7. From making any other false, deceptive or misleading representations of the same or similar tenor and import, particularly representations concerning the value and quality of products and representations which import or imply that products are sold at prices that do not afford the seller a profit.

It is further ordered, That respondents within 60 days from and after the date of 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 with the order to cease and desist hereinabove set forth.

Complaint

19 F. T. C.

IN THE MATTER OF

GRIFFIN GROCERY COMPANY, J. T. GRIFFIN, BRYAN
COLE, AND BRYAN MATHESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2230. Complaint, Sept. 15, 1934—Decision, Nov. 5, 1934*

Where a wholesale grocery corporation engaged in manufacture and sale of a baking powder under the name "Hi-Lo"; and several individuals, its general officers, purported to demonstrate leavening effect of said powder through so-called water glass test, i. e., amount and duration of effervescence following addition thereto of water, and, in order to deceive and mislead purchasing public and disparage competitive products, advised such test thereon, facts being that effervescence resulting as aforesaid constituted no measure of leavening effect of said powders, but was due to inclusion, for said purpose alone, of small proportion of dried white of egg in product in question, the leavening properties of which were not changed thereby; with capacity and tendency to and probable effect of misleading and deceiving purchasing public as to inherent leavening properties and excellence of their said powder and presence of such qualities in products of competitors, certain of whom do not incorporate in their otherwise similarly composed powders the white of egg, and of diverting trade to them from their said competitors, lessening competition between them, and tending to create a monopoly in them in said line of commerce: *Held*, That such practices were to be prejudice of the public and to competitors, and constituted unfair methods of competition.

Mr. Robt. N. McMillen 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 Griffin Grocery Company, a corporation, and J. T. Griffin, Bryan Cole, and Bryan Mathes, as individuals, have been and are 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. Respondent Griffin Grocery Company is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma. Respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are respectively president, vice president, and secretary of said respondent corporation and as such are able

Complaint

to, and do, manage and control said corporation and its business transactions. Said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are able to, and do, accomplish their will and purposes by and through the agency and instrumentality of said corporation so that all acts and business transactions of and by said corporation are also the acts and transactions of said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes as individuals.

Respondents have been and are engaged in offering for sale and selling at wholesale groceries and such articles of merchandise as are usually kept and offered for sale and sold by persons, partnerships, or corporations engaged in business as wholesale grocers.

Respondents' principal office and place of business is located at Muskogee in the State of Oklahoma. Respondents also maintain and operate places of business at McAlester, Seminole, Okmulgee, Pryor, Antlers, Tulsa, Oklahoma City, Miami, Holdenville, Tahlequah, and Wilburton in the State of Oklahoma; at Denison in the State of Texas; and at Forth Smith and Fayetteville in the State of Arkansas.

Respondents, in addition to said business of offering for sale and selling the merchandise above indicated, also maintain and operate the business of manufacturing certain commodities and merchandise, which business of manufacturing they carry on under the name, title, and designation of Griffin Manufacturing Company.

Respondents also are engaged in the manufacture of a certain product, to wit, baking powder. Said baking powder is so manufactured and offered for sale and sold by respondents under the trade name of "Hi-Lo" baking powder and is represented by respondents through the use of labels and otherwise as being manufactured by "Hi-Lo Baking Powder Co." There is no separate corporate or other entity by the name of "Hi-Lo Baking Powder Co.", but said name is used by respondents as a mere trade name under which they manufacture and offer for sale and sell said baking powder.

Respondents have been and are engaged in offering for sale and selling said commodities and merchandise, including said Hi-Lo baking powder, in commerce between and among the several States of the United States and the District of Columbia, and in causing said products when so sold to be transported from respondents' said principal place of business in the State of Oklahoma, or from the place or places where they are so manufactured or may be assembled and stored, into and across the several States of the United States and the District of Columbia to the several purchasers thereof

located at various places in said several States, or in the District of Columbia.

Respondents so offer for sale and sell said goods and merchandise to retail merchants who resell the same to retail purchasers and ultimate consumers thereof.

PAR. 2. Other persons, firms, and corporations have been and are engaged in selling baking powder and pursuant to such sales ship said merchandise from their respective places of business into and through other States of the United States and the District of Columbia. In the course and conduct of their business, respondents have been and are in competition with all such other persons, firms, and corporations in that they, respondents, are selling and seeking to sell their baking powder in the same territory and to the same retail dealers as those to whom said competitors sell and seek to sell.

PAR. 3. The public purchases and uses baking powder because of, and for the sake of, its leavening properties and power, and is much inclined to judge of its merits by what the public conceives to be its leavening properties and power. The ingredients of respondents' said Hi-Lo baking powder consist almost exclusively of bicarbonate of soda, calcium, acid phosphate, sodium aluminum sulphate and corn starch. These ingredients are also the ingredients of more than three fourths by weight of all baking powders manufactured in the United States. These ingredients furnish the whole of the leavening properties and power of respondents said baking powder.

In addition to said ingredients, respondents incorporate in said baking powder a minute proportion of dried white of egg, the amount of which as indicated upon the labels placed thereon by respondents is ten hundredths of one percentum. Such white of egg does not add to or affect the leavening properties or power of said baking powder in any degree. Its only purpose is to be used in a so-called water-glass test to deceive and mislead the purchasing public into an erroneous belief as to the inherent leavening properties and power of said baking powder, also as to its leavening properties and power in comparison with those of competitive baking powders that do not contain such dried white of egg.

Certain of said competitors of respondents manufacture and offer for sale and sell in said commerce and in competition with respondents, baking powder composed of the constituent elements above enumerated, except that no dried white of egg is incorporated therein. Certain others of said competitors of respondents manufacture and offer for sale and sell in said commerce and in com-

petition with respondents, baking powder composed of the constituent elements above enumerated or of other constituent elements having like and equivalent leavening properties and power, or composed partly of the constituent elements above enumerated and partly of other constituent elements having like and equivalent leavening properties and power, except that no dried white of egg is incorporated therein.

PAR. 4. For the purpose of misleading and deceiving the purchasing public as to the leavening properties and power of their said baking powder, and of creating a purchaser demand for said baking powder by misleading and deceiving the purchasing public into the erroneous belief that the leavening properties and power of said baking powder are vastly greater than they in fact are, respondents cause demonstrations to be made to the public at retail stores at which the said baking powder is kept and sold and at other convenient places, by the use of the so-called water-glass test. The test is simple and requires no skill. The demonstrator (a representative of respondents performing before and to the purchasing public) takes two teaspoonfuls of Hi-Lo baking powder which he mixes with two teaspoonfuls of water. In a short time the ingredients effervesce to the top of and over the glass and will hold in such shape and size for a considerable length of time. Said excessive effervescent action is due to the fact that the white of egg forms a scum or membrane over the top of the product and thus retains the whole of the carbonic dioxide gas generated by the mixture of said baking powder with said water.

The demonstrator explains that the amount of said effervescence and the length of time it holds its form and bulk are proof of the very great leavening properties and power of said baking powder. To all persons not informed as to the real cause of such excessive effervescence and of the length of time the same continues to hold its form and bulk, this demonstration is evidence that respondents' baking powder has unusually great leavening properties and power. The purchasing public is thereby misled and deceived as to the inherent leavening properties and power of said baking powder and as to the effectiveness and excellence of said baking powder for use in the preparation of foods; and is misled and deceived into the purchase thereof in, and because of, such erroneous belief so induced by said misleading and deceptive demonstration.

For the further purpose of misleading and deceiving the purchasing public as to the inherent leavening properties and powers of baking powders offered for sale and sold by respondents' said competitors who do not incorporate dried white of egg in their baking

powders and of disparaging such competitive powders, said representatives of respondents advise the public to try a like experiment with such competitive powders. It requiring no skill to try the experiment with such competitive powders, many of the purchasing public try such experiments. Because of the absence of said dried white of egg, such mixtures of baking powder and water do not effervesce as greatly as does respondents' baking powder and water mixture and the effervescence does not hold its form and size for as long a time. To all uninformed members of the purchasing public, which number embraces a vast majority of the purchasing public, this demonstration is proof that said competitive baking powder has but small and ineffective leavening properties and power and is not desirable or efficient in the preparation of foods. Persons so trying said experiment are thereby misled and deceived into an unwarranted prejudice against such competitive powders and an unwillingness to purchase or use the same, all to the injury of said competitors.

For the further purpose of misleading and deceiving the purchasing public as to the comparative leavening properties and powers of respondents said baking powder and of the several baking powders offered for sale and sold by respondents' said competitors who do not incorporate dried white of egg in their baking powders, respondents at the same time and place make before the public and prospective purchasers of baking powder the aforesaid water-test demonstration as to their own baking powder and also as to the baking powders that are so offered for sale and sold by respondents' competitors in competition with respondents as above alleged, choosing for such demonstrations only baking powders in which no white of egg is incorporated. For the reasons above alleged, the mixture of respondents' said powder with water effervesces as above alleged and the mixture of said competitive baking powder with water also effervesces as above alleged, and the public is thereby misled and deceived into the erroneous belief that the leavening properties and power of respondents' said baking powder are vastly greater than the leavening properties and power of said baking powders so being offered and sold by respondents' said competitors. The public is thereby misled and deceived into the erroneous belief that, as compared with baking powders so offered for sale and sold by respondents' said competitors, respondents' said baking powder is more desirable and more efficient in the preparation of foods, and should be purchased and used in preference to the baking powders of said competitors.

PAR. 5. The use by respondents of said water-test demonstration in the ways above alleged has the tendency and capacity to and probably will mislead and deceive the purchasing public into the following enumerated erroneous beliefs:

1. That the inherent leavening properties and power of respondents' said baking powder are substantially greater than they in fact are.

2. That the inherent leavening properties and power of the baking powders so offered for sale and sold by respondents' competitors are substantially less than they in fact are.

3. That, in comparison with the leavening properties and power of said baking powder so being offered for sale and sold by respondents' said competitors, the leavening properties and power of respondents' said baking powder are great and the leavening properties of said baking powder so being offered for sale and sold by respondents' competitors are small.

4. That because of such larger leavening properties and power of respondents' said baking powder, and of such smaller leavening properties and power of said baking powder so being offered for sale and sold by respondents' competitors, respondents' said baking powder is more desirable and more efficient in the preparation of foods, and ought to be purchased and used in preference thereto.

The use by respondents of said water-glass demonstration has the tendency and capacity to, and probably will, divert trade to respondents from their said competitors, lessen competition between respondents and their said competitors and tend to create a monopoly in respondents by inducing the public to purchase and use respondents' said baking powder in preference to said baking powder so offered for sale and sold by respondents' said competitors, in and because of the above enumerated erroneous beliefs.

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

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 Griffin Grocery Company, a corporation and J. T. Griffin, Bryan

Cole, and Bryan Mathes, hereinafter referred to as respondents, charging them with unfair methods of competition in commerce in violation of the provisions of Section 5 of the said Act.

Thereupon the respondent Griffin Grocery Company filed its answer to the complaint, but respondents J. T. Griffin, Bryan Cole, and Bryan Mathes failed to enter appearance or file answer within the time fixed by the rules of practice and procedure of the Federal Trade Commission.

Thereafter respondent Griffin Grocery Company filed a statement that it had no objection to the issuance of a cease and desist order and did not desire to further appear.

Thereafter the proceedings regularly came on before the Federal Trade Commission on such complaint and answer, and the Commission having duly considered the allegations of the complaint and the admissions of the answer, both express admissions and admissions by failure to deny, now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Griffin Grocery Company is a corporation organized and existing and doing business under and by virtue of the laws of the State of Oklahoma. Respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are, respectively, president, vice president, and secretary of said corporation and as such are able to, and do, manage and control said corporation and its business transactions; said individual respondents are able to and do accomplish their will and purposes by and through the agency and instrumentality of said corporation, so that all acts and business transactions of and by said corporation are also the acts and transactions of said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes.

PAR. 2. Said respondents have been and are engaged in offering for sale and selling at wholesale groceries and such other articles of merchandise as are usually kept and offered for sale and are sold by wholesale grocers.

PAR. 3. Respondent's principal office and place of business is located at Muskogee in the State of Oklahoma. They maintain and operate places of business also at McAlester, Seminole, Okmulgee, Pryor, Antlers, Tulsa, Oklahoma City, Miami, Holdenville, Tablequah, and Wilburton, all in the State of Oklahoma, at Fort Smith and Fayetteville, in Arkansas, and Denison, in Texas.

PAR. 4. Respondents under the trade name of Hi-Lo Baking Powder Company are engaged in the manufacture and sale of a

certain baking powder under the name "Hi-Lo" and when sold said product is shipped from respondents' places of business in Oklahoma into and across the several States of the United States, to the purchasers thereof. Said sales are made to merchants who resell the same to ultimate consumers.

PAR. 5. There are in business in the various States other persons, firms, and corporations engaged in selling baking powders and who pursuant to such sales ship said merchandise from their respective places of business into and through other States of the United States. In the course and conduct of their business, respondents have been and are in substantial competition with such other persons, firms and corporations above mentioned.

PAR. 6. In the manufacture of their said baking powder respondents incorporate a small proportion of dried white of egg, which does not add to or effect the leavening properties or power of said baking powder, but its only purpose is in connection with a so-called water-glass test to deceive and mislead the purchasing public into an erroneous belief as to the inherent leavening powers and properties of respondents' baking powder and as to its leavening properties and power in comparison with competitive baking powders that do not contain such dried white of egg.

PAR. 7. Certain of respondents' competitors manufacture and offer for sale and sell in interstate commerce and in competition with respondents a baking powder composed of the same or similar constituent elements as respondents' baking powder except that no dried white of egg is incorporated therein.

PAR. 8. The public purchases and uses baking powder because of and for the sake of its leavening properties and power. For the purpose of misleading and deceiving the public as to the leavening properties and power of their said baking powder and of creating a purchaser demand for same, respondents cause demonstrations to be made to the public and to retail and wholesale merchants by the use of the so-called water-glass test. This consists in taking a quantity of Hi-Lo baking powder and mixing the same with an equal quantity by volume of water. In a short time the ingredients effervesce to the top of and over the glass and will hold such shape and volume for considerable length of time, due to the fact that the white of egg forms a membrane over the surface and thus retains the whole of the carbon dioxide gas generated by the mixture. The demonstrator explains that the amount of said effervescence and the length of time it holds its form and bulk are proof of the very great leavening properties and power of respondents' baking powder.

Conclusion

19 F. T. C.

To persons not informed as to the real cause of such excessive effervescence and the length of time the same continues to hold its form and bulk, this demonstration is evidence that respondents' baking powder has unusually great leavening properties and power.

PAR. 9. The result of such test and representation by respondents' demonstrator is to mislead and deceive uninformed persons as to the inherent leavening properties and power of said baking powder and as to its effectiveness and excellence in the preparation of foods and to lead the public to purchase the same because of such erroneous belief.

PAR. 10. For the further purpose of misleading and deceiving the purchasing public and of disparaging competitive baking powders, said respondents through their demonstrators advised the public to try a like experiment with such competitive powders, and many of the purchasing public tried such experiments. Because of the absence of said dried white of egg from the competitive baking powders so tested by the public, such baking powders do not effervesce to the extent as does respondents' powder, nor does the effervescence hold its form and size for as long a time. To the great majority of the purchasing public this is proof that said competitive baking powder has but small and ineffective leavening properties and power as compared with respondents' baking powder.

PAR. 11. The use by respondents of said water-glass test in the manner and under the circumstances hereinabove set forth has the capacity and tendency to, and probably will, mislead and deceive the purchasing public into the erroneous belief that the inherent leavening properties and power of respondents' said baking powder are substantially greater than they in fact are; that the baking powders offered for sale and sold by respondents' competitors are substantially less than they in fact are; and has the capacity and tendency to, and probably will, divert trade to respondents from their said competitors, lessen competition between respondents and their competitors, and tend to create a monopoly in respondents in that line of commerce.

CONCLUSION

The aforesaid acts and practices of respondents are to the prejudice of the public and of respondents' competitors, and under the conditions and circumstances stated in the foregoing findings constitute 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

ORDER TO CEASE AND DESIST

Now on this day comes on for consideration the above matter, upon the Commission's complaint and the answer of respondent, Griffin Grocery Company. And the Commission having made its findings as to the facts and its conclusion that the respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is hereby ordered, That the respondent, Griffin Grocery Company, its officers, agents, and employees, and respondents J. T. Griffin, Bryan Cole, and Bryan Mathes, forthwith cease and desist from the use in, or in connection with, its sales or offering for sale of baking powder in interstate commerce, of the so-called water-glass test, with the representation, or under such circumstances as to amount to a representation, that such test demonstrates the leavening properties or power of respondent company's baking powder or its comparative leavening properties or power as compared with competitive baking powders, or from suggesting or representing to others, distributors, or merchants or members of the consuming public, either through the medium of newspapers or other publications, or the radio or by word of mouth, or otherwise, that said water-glass test is a method of measuring or determining the leavening properties or power of its said baking powder or of competitive baking powders. The water-glass test herein referred to consists of the mixing of baking powder, containing dried white of egg or some other ingredient to increase the surface tension of the mixture, and water and noting or comparing the amount and persistence of the effervescence thereby resulting.

It is further ordered, That said respondents, within 30 days from 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
AMERICAN MEMORIAL 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 2182. Complaint, May 17, 1934—Decision, Nov. 6, 1934

Where a corporation engaged in the manufacture and sale of monuments with core of concrete and outer facing of crushed marble, granite, copper, or mica, mixed with cement and cast in appropriate molds, and so made as to simulate closely monuments of natural granite or marble, carved from the original stone; in advertising the same—

- (a) Represented and implied that said monuments were offered and sold, for advertising purposes, for a limited time, and to selected purchasers in their respective communities, at a greatly reduced price, through such statements in newspapers and magazines of interstate circulation as "\$60 Monument \$19. For a limited time to advertise our wonderful values. We want one in every community", etc., and through such statements in circular letters sent to those making inquiry in response to the aforesaid advertisements, as "In order to get a specimen of our work in every possible locality * * * we are offering to let at least one prominent family in each community secure one of our beautiful designs * * * at about one third of its actual value * * *", "* * * As this is a limited time offer being made especially to you, your order should be mailed in promptly if you want a monument at these money saving prices. * * * We are approaching the time when we must recall the extra special advertising prices * * *" "A small deposit will hold the offer open 60 days", and through lists of purported "regular prices" and "special advertising prices", which showed pretended reductions from \$60 to \$19, \$75 to \$28.50, and numerous other comparable purported savings, facts being that it did not make or quote special prices or make special offers for advertising purposes or for a limited time or to selected purchasers, the prices it offered were those regularly made and offered by it to all, regardless of any limitation as to time of acceptance, number of purchasers in a community, or otherwise; and
- (b) Depicted in the cuts used by it, its said monuments, which closely simulated in shape, design, color and appearance those made from natural granite or marble carved from the original stone, and which, as thus depicted, had the same general appearance as natural stone monuments similarly set forth, without stating in its catalogs, circular letters, or advertisements that said products were made from synthetic or cast stone, and were not cut and carved from the natural, original stone as it comes from the quarry, and tended thereby to lead members of the purchasing public to believe that said cuts and pictures were of a product made from natural stone and cut and carved from the original substance;

With tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said monuments were offered at special or introductory or advertising prices, exclusive to the person to whom offered,

Complaint

and available for a limited time only, and that they were made from the natural, original stone as it came from the quarry, and to induce the purchase and use thereof because of the erroneous beliefs thus engendered, and divert trade to it from competitors engaged in the sale of similar products, and also of those made from the original stone as above set forth: *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. John W. Hilldrop for the Commission.

Douglas & Andrews, of Atlantic, Ga., 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 Georgia corporation engaged in the manufacture and sale, by mail, of monuments made with an inner core of concrete and an outer facing of molded crushed marble, granite, granulated copper, or mica, and cement, and with principal place of business in Atlanta, with advertising falsely or misleadingly as to special prices, offers, and values, and 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, in newspaper and periodical advertising, and in circulars and price lists sent those replying thereto, represents its said synthetic or cast-stone products as offered for a limited time and to introduce the same into the particular communities concerned, through the particular prospective purchaser, at greatly reduced prices, as in said advertising specified,¹ facts being that the purported special prices are those at which its products may be had by anyone, without any time limitation, and in that in its said catalogs it fails to advise the reader that its said products are not, as they appear, cut and carved from the original stone; with tendency and capacity to confuse, mislead, and deceive members of the public into believing that said monuments are offered at special introductory or advertising prices, exclusive to the person to whom offered and for a limited time only, and are made from the natural, original stone as it comes from the quarry, and to induce members of the public to buy and use its said products because of such erroneous belief, and to divert trade to it from competitors engaged in the sale in interstate commerce of similar products, and also products made from the original natural stone as it comes from the quarry; all to the injury and prejudice of the public and competitors.

¹ Respondent's advertisements, as alleged and quoted in the complaint, may be found set forth in the findings, *infra*, at pages 359-360.

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 American Memorial Company, a corporation, charging the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of the Act.

The respondent, having entered its appearance, and having filed its answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon, the respondent, having stipulated in writing that it waived the filing of briefs and oral argument, this proceeding came on for final hearing on the record and the Commission, having duly considered same and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That respondent, American Memorial Company, is a corporation organized, existing, and doing business under the laws of the State of Georgia; with its office and principal place of business in the city of Atlanta in said State.

PAR. 2. That said respondent, American Memorial Co., is now and has been for more than 2 years last past engaged in the business of manufacturing monuments which are made with an inner core of concrete and with an outer coating or facing of crushed marble or crushed granite, which is mixed with a binder of cement and cast in appropriate molds; using at times granulated copper and mica, also mica alone, in the mixture containing the crushed stone.

These monuments manufactured as aforesaid by respondent are by it sold to the public by advertisements in newspapers and magazines having an interstate circulation, and circular letters sent out by it direct in the United States mail to actual and prospective customers throughout and in the several States of the United States, and said respondent caused its said monuments, when sold, to be transported in interstate commerce from its said place of business in Georgia to and into, and through the States of the United States other than Georgia, to the buyers thereof to whom they have been sold.

PAR. 3. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale and transportation in interstate commerce of monuments of various kinds, including monuments similar and alike to those manufactured, sold, and transported in interstate commerce by respondent, and made of the same ingredients as those used by respondent in the manufacture of its monuments and set out and described in paragraph 2. Said respondent has been and is now in competition in interstate commerce in the sale of its said monuments with such other individuals, firms, and corporations likewise engaged in manufacturing and shipping monuments, when manufactured, in interstate commerce.

PAR. 4. That in promoting the sale of its said monuments, the said respondent inserted, or caused to be inserted, in newspapers and magazines having an interstate circulation advertisements of which the following is an example:

\$60 MONUMENT \$19

For a limited time to advertise our wonderful values. We want one in every community. 3 ft. high, 16 in. wide, 10 in. thick, wt. 500 lbs. All Lettering Free. Satisfaction Guaranteed. Write for information. American Memorial Company Dept. B-67. 1489 Piedmont Ave., Atlanta, Ga.

In the foregoing and similar advertisements, respondent represents and implies to prospective purchasers that its monuments are offered for sale at a greatly reduced price; that the offer is made for advertising purposes; and that such offer is limited in point of time.

When prospective purchasers reply to such advertisements similar to the foregoing, respondent sends them through the United States mail circular letters in which similar representations are made and other representations indicating that the price quoted is one greatly reduced from the usual and customary selling price of the said monuments, also that the price quoted is for a limited time only and that it is quoted to only one person in a community as an introductory offer. Among such representations are the following:

Your prompt response to our advertisement gives you the first chance to benefit by the special offer now open on our beautiful monumental designs.

In order to get a specimen of our work into every possible locality in this country, we are offering to let at least one prominent family in each community secure one of our beautiful designs shown in our catalog at about one-third of its actual value. * * *

* * * As this is a limited time offer being made especially to you, your order should be mailed in promptly if you want a monument at these money saving prices. * * *

Findings

19 F. T. C.

* * * We are approaching the time when we must recall the extra special advertising prices which we have had on them (respondent's monuments), and to restore our prices to something like their real value.

* * * this matchless opportunity to get a beautiful one (monument) almost free. * * *

* * * a small deposit will hold the offer open 60 days. * * *

In a catalog or booklet also sent to prospective purchasers, respondent represents that the price quoted on each monument listed therein is a—

Special Introductory Price

and that the offer made thereby is a

Special Introductory Offer

In said catalog various monuments are pictured and described and what is represented to be the "Regular Price" on each is set out as well as the "Special Advertising Price." Such prices are given as follows:

| Regular price: | <i>Special advertising price</i> |
|----------------|----------------------------------|
| \$60.00 ----- | \$19.00 |
| 75.00 ----- | 28.50 |
| 70.00 ----- | 27.50 |
| 100.00 ----- | 44.00 |
| 40.00 ----- | 14.50 |
| 100.00 ----- | 48.00 |
| 150.00 ----- | 59.00 |
| 50.00 ----- | 17.00 |
| 75.00 ----- | 29.50 |
| 125.00 ----- | 38.50 |
| 200.00 ----- | 82.50 |
| 250.00 ----- | 97.50 |
| 50.00 ----- | 14.50 |

That in truth and in fact respondent did not make or quote special prices or make special offers for advertising purposes or for a limited time but such offers and such prices were those regularly made and offered by respondent to all regardless of any limitation as to time of acceptance or as to the number of purchasers in a community or otherwise.

PAR. 5. That respondent's monuments in shape, design, color, and appearance closely simulate monuments made from natural granite or natural marble, as the case may be, as the same is cut and carved from the original stone. That respondent's monuments in the cuts used by respondent in its said catalog have the same general appearance as natural stone monuments as aforesaid when similarly pictured, and such cuts and pictures are calculated to and have the tendency and capacity, without descriptive information, to lead members of the purchasing public to believe that they are in fact cuts and pictures of monuments made from natural stone as the same

356

Order

are cut and carved from the original stone. That now nowhere in said catalog or in said circular letters or in its advertisements does the respondent disclose that its monuments are made from synthetic or cast stone or that they are not cut and carved from the natural, original stone as it comes from the quarry. That purchasers of respondent's monuments do not usually see samples of the same prior to the time they are ordered and paid for.

PAR. 6. That the representations of respondent as aforesaid have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's monuments are offered for sale at special or introductory or advertising prices; that the offer made is exclusive to the one to whom offered and is available for a limited time only; and that said monuments are made from the natural, original stone as it comes from the quarry when such are not the facts. That said representations of respondent have the tendency and capacity to induce members of the public to buy and use its monuments 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 the same or similar kind as well as those made from the original, natural stone as it comes from the quarry.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony taken and brief filed therein, and Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal

Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, American Memorial Co., a corporation, its agents, representatives, and employees, in selling and in offering for sale in commerce among the several States of the United States or in the District of Columbia, its monuments, described in the findings of the facts herein, cease and desist from—

(a) advertising and representing by advertisements inserted in newspapers, magazines, trade journals, circular letters, or otherwise, its said monuments for sale at any price greater than the actual, usual and customary price charged therefor, coupled with the statement that for a limited time and to a limited number of persons in a community, the said monuments can be bought for so much less than the fictitious price advertised;

(b) from representing and holding out by advertisements or otherwise to purchasers, prospective purchasers or the buying public that the prices quoted are for a limited time;

(c) from representing by advertisements or otherwise, that any offer of sale or quotation of price is made to only one person in a community as an introductory offer;

(d) from representing by advertisements or otherwise that any quotation of price is a special price unless in truth and in fact a special price is being quoted at a sum less than the usual and customary price charged therefor;

(e) from publishing in magazines, newspapers, trade journals, pamphlets, circulars or on its letterheads or otherwise, pictures or photographs of its said monuments made of the materials set out in the findings of the facts herein which said pictures and photographs have the appearance of and simulate monuments made from natural granite or natural marble unless in truth and in fact said monuments so photographed and advertised are made of natural granite or natural marble or unless, in its advertisements containing pictures and photographs of its monuments made of the materials mentioned in the findings of the facts herein, it is clearly and plainly stated and designated that such monuments so photographed and advertised are not made of natural granite or natural marble.

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

Complaint

IN THE MATTER OF

JACK D. MENDELSON, TRADING UNDER THE FIRM
NAME AND STYLE OF METRO MANUFACTURING
COMPANY

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

Docket 2216. Complaint, Aug. 9, 1934—Order, Nov. 6, 1934

Consent order requiring respondent, his agents, etc., in connection with the sale or distribution, in interstate commerce or in the District of Columbia or in any Territory, of radio sets manufactured or assembled or sold or offered for sale by him, under the names of other well-known manufacturers, to cease and desist from directly or indirectly—

- (a) Making or using any representations, statements, or assertions, in advertisements or trade promotion literature, on wrappers or containers, or signs, or in sales talks, or in any other manner whatsoever, to the effect that such radio sets or other similar devices, appliances or products are "Edison" or "Brunswick" (Brunswick) radio sets, devices, appliances or products manufactured, assembled and sold, or sponsored, indorsed and approved, licensed, authorized or consented to by Thomas A. Edison or companies organized or controlled by said individual, or by any person, corporation or partnership, licensed, authorized or empowered by said individual or corporation so to do, or by Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., Brunswick Radio Corporation or any person, corporation or partnership authorized, licensed or empowered by them or either of them; and from—
- (b) Applying, attaching to or using, or causing to be applied, attached to or used, on any radio set or other device, appliance or product manufactured or assembled and sold by respondent, "escutcheon plates, brands, marks or other means, bearing the name 'Edison', or 'Brunswick' (Brunswick)."

Mr. Carrel F. Rhodes 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 Jack D. Mendelson, trading under the firm name and style Metro Manufacturing Company, hereinafter referred to as respondent, 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:

Complaint

19 F. T. C.

PARAGRAPH 1. Respondent, Jack D. Mendelson, owns and has caused to be registered with the New York County Clerk's Office, New York City, on March 23, 1932, the trade name "Metro Manufacturing Company", under which name respondent operates.

PAR. 2. Respondent, Jack D. Mendelson, now is and for more than two years last past has been engaged, under the name and style "Metro Manufacturing Company" with his office and principal place of business at 2052 Eightieth Street, city of Brooklyn (formerly 117 West Street, New York City) State of New York, in the business of manufacturing or assembling radio sets and selling them to the retail trade. Respondent sells said radio sets to retail dealers and customers located in the various States of the United States other than in the State of New York, and when so sold respondent causes said radio sets to be transported from the City of New York, State of New York, through and into other States of the United States, other than the State of New York, to the purchasers thereof at their respective locations. In the course and conduct of his said business respondent is in competition with various other persons, partnerships and corporations engaged in the business of manufacturing or assembling radio sets, and selling them to retail dealers and the public in interstate commerce.

PAR. 3. Respondent, Jack D. Mendelson, in the course and conduct of his business has adopted and followed the scheme and method of appropriating the names of well-known manufacturers and applying them to the radio sets manufactured or assembled and sold by him as aforesaid, thereby appropriating to himself their goodwill by the sale of his said radio sets to the purchasing public as sets made by said manufacturers.

PAR. 4. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions, and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation, and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphone and transcribing machines, radios, combination radios and phonographs, and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils, and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as

Complaint

part of their brand names, and said name "Edison" has acquired a valuable goodwill as identifying the manufacturer of such machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death, is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

PAR. 5. Respondent, Jack D. Mendelson, in the course and conduct of his said business conducted in the name of Metro Manufacturing Company has purchased what are known as escutcheon plate, which plates bear various names and which are attached in a prominent place to radio sets. Respondent has purchased and attached to radio sets manufactured or assembled, and sold by him, escutcheon plates bearing the name "Edison". Respondent has no authority or license from Thomas A. Edison, Inc., to use the name "Edison" on the radio sets manufactured, assembled, and sold by him, and his said use of that name has the capacity and tendency to, and does, mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by Thomas A. Edison, Inc., and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 6. During many years last past the Brunswick-Balke-Collender Company has been a large manufacturer of billiard and pocket billiard tables, bowling alleys, and various other articles, and its products have acquired a wide and favorable reputation, and have been in great demand by the trade and purchasing public. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand names, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Company began the manufacture and sale of phonographs and phonograph records and sometime later began the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which articles the name "Brunswick" was featured in a prominent place on said machines. In 1930 the radio and phonograph division was sold to Warner Bros. Pictures, Inc., which company organized a corporation under the

corporate name of Brunswick Radio Corporation to operate the business. Said latter company obtained the exclusive right to use the name "Brunswick" in connection with said radio sets, phonographs, and accessories thereto. Until January 1, 1933, Brunswick Radio Corporation continued the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which sets the name "Brunswick" was prominently featured. Since January 1, 1933, the manufacture of radio sets has been stopped, but said Brunswick Radio Corporation still owns the manufacturing plants in which said sets were manufactured, and may resume such manufacture at some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collendar Company and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States. During all of the time that the Brunswick-Balke-Collendar Company and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets, said companies expended large sums of money advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

PAR. 7. Respondent, Jack D. Mendelson, in the course and conduct of his said business conducted in the name of Metro Manufacturing Company, has purchased escutcheon plates bearing various names which he has attached in a prominent place to radio sets manufactured or assembled, and sold by him. Among the escutcheon plates which respondent has purchased and attached to said radio sets are plates bearing the name "Bronswick." The said name "Bronswick" is so nearly like the name "Brunswick" in appearance and sound that it is difficult for a purchaser to distinguish the difference, and the use of said name "Bronswick" by respondent on said radio sets manufactured or assembled, and sold by him has the capacity and tendency to, and does, mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured or assembled, and sold by respondent are radio sets which have been manufactured by the "Brunswick Radio Corporation."

PAR. 8. The use by respondent, Jack D. Mendelson, on radio sets manufactured, assembled, and sold by him of the names "Edison" and "Bronswick", in the manner set forth hereinabove, is false, deceptive, and misleading to the trade and purchasing public, and tends to, and does, divert trade to respondent from his said competitors who do not use such false, deceptive and misleading names for radio sets manufactured, assembled and sold by them.

PAR. 9. The above alleged acts and things done by 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

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under 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 respondent's answer thereto in which he waives hearing on the charges set forth in the complaint and refrains from contesting the proceeding, and, pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter, and serve upon respondent, without a trial, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the methods of competition alleged in the complaint, and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That in the course of, or in connection with, the sale or distribution in interstate commerce, or in the District of Columbia, or in any territory of the United States, of radio sets manufactured or assembled and sold or offered for sale by respondent under the names of other well-known manufacturers, the respondent, his agents, representatives, servants, and employees, cease and desist—

1. From directly or indirectly making or using any representations, statements or assertions, in advertisements, trade promotion literature, on wrappers or containers, or signs, or in sales talks, or in any other manner whatsoever, to the effect that the radio sets or other similar devices, appliances or products manufactured or assembled and sold by respondent are "Edison", or "Brunswick" (Brunswick) radio sets, devices, appliances or products manufactured, assembled and sold, or sponsored, endorsed and approved, licensed, authorized, or consented to by—

(A) (1) Thomas A. Edison, Thomas A. Edison, Inc., or Companies which Thomas A. Edison organized and controlled; or

(2) Any person, corporation or partnership licensed, authorized or empowered by Thomas A. Edison, or Thomas A. Edison, Inc., so to do.

(B) (1) Brunswick-Balke Collender Co.

(2) Warner Bros. Pictures, Inc.

(3) Brunswick Radio Corporation, or

(4) Any person, corporation, or partnership authorized, licensed, or empowered by them, or either of them.

2. From directly or indirectly applying, attaching to or using, or causing to be applied, attached to or used, on any radio set or other device, appliance or product manufactured or assembled and sold by respondent, escutcheon plates, brands, marks or other means, bearing the name "Edison", or "Brunswick" (Brunswick).

It is further ordered, That respondent, Jack D. Mendelson, 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
EASTMAN, SCOTT & COMPANY, TRADING AS HOME
RESEARCH, INC.

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

Docket 2234. Complaint, Sept. 27, 1934—Order, Nov. 6, 1934

Consent order requiring respondent corporation, its agents, etc., to cease and desist from selling, shipping, mailing, or otherwise circulating in interstate commerce its so-called "Mystery Book" containing false, exaggerated, unfair, and misleading statements to the general effect that foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation and leading to indigestion, constipation, and numerous other ailments, and that gases, volatile matter and odors given off from foods in so-called "airtight" chamber of an electric refrigerator are absorbed by and contaminate other foods, rendering them unsanitary and dangerous to health, and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis, and numerous other ailments, or from selling, etc., said book or pamphlet until the statements theretofore contained therein are true in fact.

Mr. John W. Hilldrop for the Commission.

Harold Hirsch and *Marion Smith*, of Atlanta, Ga., for respondent.

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 Eastman, Scott & Company, a corporation trading as Home Research, Inc., has been and 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. Respondent, Eastman, Scott & Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business in the city of Atlanta, in said State, and now and for more than two years last past has traded under the name Home Research, Inc. It is now and for more than two years last past, under the name Home Research, Inc., been engaged in creating, formulating,

and publishing advertising matter in the form of books and in other forms and in the sale of such advertising matter including books, between and among the various States of the United States and in the District of Columbia and now and for more than two years last past has caused such advertising matter, including books, when sold, to be transported from its principal place of business in the city of Atlanta aforesaid to the purchasers thereof located in the State of Georgia and in other States of the United States and in the District of Columbia and there is now and has been for more than two years last past a constant current of commerce by the respondent in such advertising matter including books, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the distribution and in the sale of advertising matter including books between and among various States of the United States and in the District of Columbia.

PAR. 2. Certain persons, firms, associations, and corporations have been, and are, engaged in offering for sale and selling in commerce between and among the several States of the United States refrigerators that depend for their cooling processes upon the use of ice that is placed therein for that purpose. In the trade and by the public such refrigerators are commonly known and designated as nonmechanical refrigerators. Certain persons, firms, associations, and corporations have been, and are, engaged in offering for sale and selling in commerce between and among the several States of the United States and the District of Columbia, refrigerators that do not depend for their processes upon the use of ice that is placed therein for that purpose. In the trade and by the public such non-ice-using refrigerators are commonly known and designated as mechanical refrigerators. One type of such mechanical refrigerators depends for its cooling processes upon certain appliances and processes operated by currents of electricity. Refrigerators of this type are in the trade and by the public commonly known and designated as electric refrigerators. In recent years many electric refrigerators have been sold to the public and are in use by the public. The number thereof is increasing rapidly.

The sellers of said nonmechanical refrigerators above referred to are in competition in such commerce between and among the several States of the United States and the District of Columbia with other persons, firms, associations, and corporations likewise engaged in offer-

ing for sale and selling such nonmechanical refrigerators in said commerce, and are also in competition in said commerce with the aforesaid persons, firms, associations, and corporations so offering for sale and selling in such commerce said mechanical refrigerators, including said electric refrigerators. Said sellers of said several types of refrigerators are and have been in competition in said commerce between and among themselves as to each and all said types of refrigerators. All such sellers of refrigerators have been, and are, continually causing such refrigerators, when sold, to be transported from their several places of business into and through the several States of the United States and the District of Columbia to the several purchasers thereof located at various places in such several States and the District of Columbia.

PAR. 3. In such competition between the sellers of nonmechanical refrigerators and the sellers of electric refrigerators one fact of controlling influence upon the purchasing public is the popular opinion as to the comparative desirability, effectiveness, and safety in actual operation of said two types of refrigerators. The use of ice in refrigerators has long been practiced and its desirability, effectiveness, and safety, such as they may be, are well known to the public. Because of their recent invention and introduction into popular use, the public is not so well informed as to the desirability, effectiveness, and safety of such electric refrigerators. Sellers of nonmechanical, or ice-using, refrigerators are, therefore, interested in and engaged in presenting to the purchasing public all available reasons or arguments against the desirability, effectiveness, and safety of said electric refrigerators in actual use.

The use of said electric refrigerators destroys in that degree the demand for, and sale of, ice for use in refrigerators. The increasing sales of electric refrigerators has become, and is, a menace to the sale both of nonmechanical refrigerators and of ice for use therein, and has caused the sellers of nonmechanical refrigerators and the sellers of ice for use therein to make common cause in creating sentiment adverse to the use of electric refrigerators.

PAR. 4. To meet the needs of sellers of nonmechanical refrigerators and the sellers of ice for use therein, respondent, under the false and misleading trade name of Home Research, Inc., compiled, printed, and published a certain book of propaganda against the desirability, effectiveness, and safety of electric refrigerators. Said book purports to state certain facts which Home Research, Inc., claims to have discovered which are claimed to demonstrate that electric refrigerators are in actual use undesirable, ineffective, and unsafe in their effect upon articles of food kept therein and upon persons eating

Complaint

19 F. T. C.

such food. Respondent names and designates such book as "Mystery Book". In order to make such propaganda effective in behalf of sellers of nonmechanical refrigerators and sellers of ice for use therein, respondent planned to sell and furnish copies of said book to sellers of such ice to be by them, in such ways as they deemed most effective, gotten into the hands of the public to influence public opinion and create sales resistance as against such electric refrigerators.

PAR. 5. Among the books so offered for sale and sold by respondent, as set out in paragraph 1 hereof, is said so-called "Mystery Book". For a period of two years last past respondent has been, and now is, selling and delivering said book to the public in commerce between and among the several States of the United States and the District of Columbia. Respondent makes such sales and deliveries of said book principally to sellers of ice to be used in nonmechanical refrigerators, to be by them resold, or otherwise disposed of, to the public and particularly to users of refrigerators.

In the ways above indicated and by reason of the facts above alleged, sellers of ice for use in nonmechanical refrigerators, as well as sellers of such refrigerators, have an interest adverse to the sale of electric refrigerators and are in practical effect in competition with such sellers of electric refrigerators along with the sellers of nonmechanical refrigerators. The sole purpose and effect of said "Mystery Book" being disparaging propaganda in aid of the sale of nonmechanical refrigerators and of ice for use therein, and the sole demand therefor being the desire of such sellers of ice and of nonmechanical refrigerators to use the same in aid of the sale of their said products, respondent has practically made common cause with such sellers of ice and nonmechanical refrigerators and furnishes to them the means of misleading and deceiving the public in aid of the sale of their several products.

PAR. 6. For the purpose and intent and with the effect of disparaging electrical refrigerators sold in interstate commerce and for the purpose and with the intent of promoting the sale in interstate commerce of nonmechanical refrigerators, and of the sale of ice for use in such nonmechanical refrigerators, the respondent in such "Mystery Book" hereinbefore mentioned has falsely represented, directly and by implication and inference among other things:

(1) That foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation

and leading to indigestion, constipation, and numerous other ailments;

(2) That gases, volatile matter, and odors given off from foods in what the respondent in its said "Mystery Book" calls the "airtight" chamber of an electric refrigerator are absorbed by and contaminate other foods rendering them unsanitary and dangerous to health and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis and numerous other ailments.

In truth and in fact foods in electric refrigerators do not lose water to an extent that their nutritive properties are impaired. In truth and in fact foods in electric refrigerators do not distort diets or disarrange food balance, do not retard digestion or assimilation and the use of such foods in truth and in fact does not lead to indigestion, constipation, or any other ailment. In truth and in fact gases, volatile matter, and odors given off from foods in an electric refrigerator are not absorbed by and do not contaminate other foods, do not render them unsanitary and dangerous to health and in truth and in fact foods refrigerated in an electric refrigerator do not cause toxic poisoning, constipation, appendicitis, or any other ailment.

PAR. 7. The aforesaid false and misleading representations so made in said "Mystery Book" as above alleged have the tendency and capacity to mislead and deceive the purchasing public into the false and erroneous belief that said statements are true and that electric refrigerators are undesirable, ineffective, and harmful in the ways alleged and dangerous to the eaters of food kept therein. Said false and misleading statements have the tendency and capacity to, and probably will, divert trade to sellers of nonmechanical refrigerators from sellers of electric refrigerators, to divert trade to sellers of ice to be used in nonmechanical refrigerators from sellers of electric current to be used in operating electric refrigerators; and to induce the public to purchase nonmechanical refrigerators and ice to be used therein, in and because of such erroneous belief that electric refrigerators are undesirable, ineffective, and dangerous for the reasons and in the ways alleged in said "Mystery Book".

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and of respondent's competitors 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

19 F. T. C.

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

It is now ordered, That respondent, Eastman, Scott & Company, a corporation, either under said corporate name or under the trade name of Home Research, Inc., or under any other name or designation, and its agents, servants, and employees, cease and desist from:

(a) Selling, shipping, mailing, or otherwise circulating in interstate commerce a certain book or pamphlet described in the complaint and admitted in the original answer of the respondent as "Mystery Book" until such time as the statements heretofore contained in said "Mystery Book" are true in fact.

(b) From selling, mailing, shipping, or otherwise circulating in interstate commerce the said "Mystery Book" containing the following false, exaggerated, unfair, and misleading statements or other statements of like purport and meaning, to wit:

(1) That foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation and leading to indigestion, constipation, and numerous other ailments;

(2) That gases, volatile matter, and odors given off from foods in which the respondent in its said "Mystery Book" calls the "air-tight" chamber of an electric refrigerator are absorbed by and contaminate other foods rendering them unsanitary and dangerous to health and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis, and numerous other ailments.

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 with the order herein set forth.

Complaint

IN THE MATTER OF

WILLIAM F. LORENZ, JR., DOING BUSINESS UNDER THE
NAME AND STYLE OF SOUTHERN CRUSHED SHELL
COMPANY

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

Docket 2213. Complaint, Aug. 7, 1934—Order, Nov. 16, 1934

Consent order requiring respondent individual, his agents, etc., in connection with the sale or offer of crushed shell in commerce among the several States, to cease and desist from directly or indirectly—

- (a) Using the word "oyster" in advertisements or on containers or on other printed matter or otherwise to represent, describe, or designate, crushed shell dealt in by him, unless (1) such crushed shell is composed entirely of the crushed shell of the bivalve commonly known as the oyster, or (2) where such crushed shell is composed partly of oyster shell, the word "oyster" is accompanied by a word or words, in equally conspicuous form and color, aptly and truthfully describing the other material or materials of which such product is composed;
- (b) Using an address in advertisements or other printed matter or otherwise in connection with the sale or offer for sale of crushed shell by respondent in commerce among the several States of the United States, unless respondent maintains an office or a place of business at such address; or
- (c) Publishing, circulating, or causing to be published and circulated, in connection with the sale or offer for sale of crushed shell in commerce among the several States of the United States, advertisements, circulars, or any other printed or written matter whatsoever, wherein it is falsely stated, set forth or held out to the public, (1) that the Government, or any department, branch or agency thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use; or (2) that any university, college, or other school, or any department, division, or branch thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use; or (3) that any corporation, firm, association, or person has made an analysis or conducted comparative tests of respondent's product, and/or recommended its use.

Mr. Edw. W. Thomerson 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 William F. Lorenz, Jr., doing business under the name and style of Southern

Complaint

19 F. T. C.

Crushed Shell Company, has been and 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, William F. Lorenz, Jr., is now and has been engaged for more than two years last past in the business of buying crushed fresh water mussel shell and selling the same as a jobber to wholesale and retail dealers located in various States of the United States for ultimate resale to members of the purchasing public for use in feeding chickens to supply the calcium carbonate element of their diet. That said respondent conducts said business under the name and style of Southern Crushed Shell Company and has his office and place of business in the city of Sioux City in the State of Iowa. That respondent buys his said product from button manufacturers located mostly in the State of Iowa but in some instances in other States and the respondent causes the same to be transported in interstate commerce from the various plants where it is produced to, into, and through States of the United States other than the State of origin of the respective shipments thereof, to the buyers thereof to whom or to which it is or has been sold.

PAR. 2. That 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 crushed fresh water mussel shell, crushed oyster shell, and crushed limestone intended and used for feeding chickens to supply the calcium carbonate element of their diet. 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 his said product with such other individuals, firms, and corporations.

PAR. 3. That respondent in connection with the sale of his said product as aforesaid represents in the manner and form as hereinafter set out that it is crushed oyster shell. That he has made use of a folder which he has distributed to buyers and prospective buyers of his said product in various States of the United States which contained on the front page thereof in large conspicuous red letters the words "LEADING_____OYSTER" while between said words in small type are the words "brand" and "mussel" and a picture of a baby chicken on a pile of shells. On the following pages of said folder said product is referred to as "Leading Brand Oyster" or

"Leading Oyster" without any modifying or explanatory words or phrases.

That all of said representations, taken in connection with the words "Pure Kiln Dried Triple-Screened Shells" on the front page of said folder and statements as to the use of the product to increase egg production imply to the purchasing public that respondent's product is crushed oyster shell when in truth and in fact it is crushed fresh water mussel shell. That such misleading effect is further increased by the use of the address "Gulfport, Miss.", as one of respondent's places of business when, in fact, respondent has no office or place of business at Gulfport, Miss., and never has had an office or place of business there. At one time he made use of a mailing address at said town. That points along the Gulf of Mexico are sources of origin of oyster shells used in making chicken feed for the purpose aforesaid. None of respondent's product comes from Gulfport, Miss., or from any other point on or near the Gulf of Mexico.

That respondent also makes use of other advertising and printed matter circulated as aforesaid on which is printed the same wording and picture as given on the front page of the folder above referred to. A large reproduction of the same wording and picture is also printed on the sacks in which respondent's product is displayed and sold to the purchasing public. At no place in respondent's advertising matter is it stated or explained that respondent's product is crushed fresh water mussel shell.

PAR. 4. As a part of the folder referred to in the preceding paragraph, respondent had printed therein what purported to be an exact reproduction of a letter from an official of the United States Department of Agriculture which purports to refer to respondent's "Leading Brand Shell" and which purports to be of the comparatively recent date of "February 3, 1932." Said purportedly reproduced letter contains the following references to respondent's product:

... we completed one year's work with the feeding of Leading Brand Shell, ...

... we could find no differences in the results secured in using Leading Brand Shell as compared with oyster shell, ...

... we have found Leading Brand Shell of equal value to other oyster shell as a source of lime for laying hens.

... we hope that this information will be of interest and value to you in your work with Leading Brand Shells.

That the true date of said letter was February 3, 1923, and it made no reference whatever to "Leading Brand Shell" but only generally to "mussel shell" in the portions thereof where respondent used "Leading Brand Shell" as aforesaid. Said original let-

Complaint

19 F. T. C.

ter did not contain the word "other" in the third quotation given above but the statement as originally made was as follows:

. . . we have found mussel shell of equal value to oyster shell as a source of lime for laying hens.

PAR. 5. That in other advertising matter, distributed by respondent as aforesaid, respondent caused to be reproduced therein a letter written to respondent containing a report from a chemist of an analysis of two samples of shells furnished by respondent and labeled respectively "Mixed Shells" and "Reef Shells". In said report the chemist referred to the samples by the names given on the samples as aforesaid but in respondent's purported reproduction of the report such references have been changed respectively to "Leading Brand Shell" and "Competitive Gulf Shell" thereby changing and destroying the meaning of the original report.

PAR. 6. That in one of his advertising circulars respondent caused to be inserted the following paragraph:

The Iowa State College, Ames, Iowa, advises as follows:

As a general rule if a hen is fed a normal ration properly from a protein and energy standpoint the only additional mineral which is needed is calcium carbonate (lime) for eggshell formation. This particular need may be satisfied by keeping the hen constantly supplied with Leading Brand Crushed Shell, 95 to 99 percent Calcium Carbonate, which is palatable to hens and does not contain injurious impurities.

thereby implying that such statement was issued by said college and that the use of respondent's product was recommended.

That, in truth and in fact, a somewhat similar statement was contained in an official publication issued by the Agricultural Experiment Station of Iowa State College of Agriculture and Mechanical Arts, but said statement made no reference whatever to respondent's product. Instead of reading as above quoted, the last sentence should read as follows as given in the official publication, to wit:

This particular need may be satisfied by keeping the hen constantly supplied with oyster shell, 95 to 99 percent calcium carbonate, limestone, clean mussel shells, or any other source of calcium carbonate which is palatable to the hens and does not contain injurious impurities.

PAR. 7. That crushed oyster shell is well known in the trade and among poultry raisers who purchase products such as respondent has for sale as a food for hens to be used for the purpose of supplying calcium carbonate in the diet on account of its effect in eggshell formation. That many dealers in and purchasers of such products prefer crushed oyster shell for such feed for hens to other feed containing calcium carbonate and believe that it is superior to other such feed. That crushed oyster shell sells at a higher price

than does crushed fresh water mussel shell. That crushed fresh water mussel shell is not as salable for the use above stated as is crushed oyster shell.

PAR. 8. That the representations of respondent as aforesaid have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that his crushed fresh water mussel shell is oyster shell, that purported quotations from letters and other sources set out in his advertising matter are exact quotations from the original sources thereof and that respondent's product was referred to therein and had been tested and was recommended by the authors thereof or the agencies where they originated, when such are not the facts. That such misleading representations have the tendency and capacity to induce members of the public to buy and use respondent's said product because of such erroneous beliefs and to divert trade to respondent from competitors engaged in the sale in interstate commerce of products used for the same general purpose for which respondent's product is advertised and used as aforesaid.

PAR. 9. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and the substituted answer of the respondent thereto wherein he waives hearing on the charges set forth in the complaint, refrains from contesting the proceedings and, pursuant to paragraph 2 of Rule III of the Rules of Practice and Procedure, as amended and revised on August 20, 1934, consents that the Commission may make, enter, and serve upon him, without evidence and without findings as to the facts, or other intervening procedure, an order to cease and desist from the violations of law as charged in said complaint; and the Commission having duly considered the matter and being fully advised finds that respondent has violated 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"—

It is now ordered, That the respondent, William F. Lorenz, Jr, doing business under the name and style of Southern Crushed Shell

Order

19 F. T. C.

Company, his agents, servants, and employees cease and desist from directly or indirectly:

(1) Using the word "oyster" in advertisements or on containers or other printed matter or otherwise to represent, describe, or designate crushed shell which respondent sells or offers for sale in commerce among the several States of the United States (a) unless such crushed shell is composed entirely of the crushed shell of the bivalve commonly known as the oyster, or (b) unless, where such crushed shell is composed partly of oyster shell, the word "oyster" is accompanied by a word or words, in equally conspicuous form and color, aptly and truthfully describing the other material or materials of which such product is composed.

(2) Using an address in advertisements or other printed matter or otherwise in connection with the sale or offers for sale of crushed shell by respondent in commerce among the several States of the United States, unless respondent maintains an office or a place of business at such address.

(3) Publishing and circulating, or causing to be published and circulated, in connection with the sale or offers for sale of crushed shell in commerce among the several States of the United States, advertisements, circulars, or any other printed or written matter whatsoever, wherein it is falsely stated, set forth or held out to the public:

(a) That the United States Government, or any department, branch, or agency thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use;

(b) That any university, college, or other school, or any department, division, or branch thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use;

(c) That any corporation, firm, association, or person has made an analysis or conducted comparative tests of respondent's product and/or recommended its use.

It is further ordered, That the respondent, William F. Lorenz, Jr., doing business under the name and style of Southern Crushed Shell Company, shall, within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

BATTLE CREEK APPLIANCE COMPANY, LTD., (ALSO
KNOWN AS W. T. B. LABORATORIES, ETC.) ET AL.

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

Docket 2017. Complaint, Mar. 9, 1932—Decision, Nov. 19, 1934

Where a partnership engaged in selling by mail order a goitre treatment consisting of, (1) diagnosis from answers to questions on its so-called diagnosis chart, (2) liquids, pills, medicines, and salve, with printed instructions for their use, and (3) printed instructions as to patient's diet and general care, in competition, among others, with many large pharmaceutical houses selling preparations, for administration on physicians' prescriptions, to jobbers, wholesale and retail drug stores, and hospitals and boards of health—

Represented that it could determine the absence or presence and type of goitre from the patient's answers to said question, and properly and efficaciously treat such patient, by mail, without having seen him, making such statements in newspaper and periodical advertisements of general circulation and through booklets and leaflets published and distributed to patients and prospective patients, as that a new treatment had been developed for goitre, which many believed would prove to be the "long-sought specific for this unsightly and dangerous disease", had caused many of the largest and most hideous goitres to recede almost in a day, causing them to "gradually get smaller, and in many cases" to be "entirely gone in a few weeks", was "equally efficient in cases of toxic and so-called inside goitre", and was one which was "harmless" and could be used by anyone "with perfect safety at home", and that "200,000 others have treated goitre at home by this harmless easy method", which "ends goitre quick without danger or operation", and that "surgery should never be considered except as a last resort", together with other statements of similar tenor, and set forth in the book "Goitre, its Causes, Dangers, and Treatment", sent prospective patients, many purported testimonials of laymen claiming that they had been cured thereof by the treatment in question;

The facts being such members of the laity were not able to say truthfully whether they had ever had such affliction or not, or been cured or relieved thereof by said treatment, and the so-called diagnosis chart, with the numerous questions therein propounded, did not afford, as claimed, a means of ascertaining, without physical examination, the absence or presence of goitre, for which purpose careful examination by a skilled physician alone suffices, said various preparations were not specifics for goitre, and would not cause recession within one day or any specified time, contained possibilities of temporary or permanent injury to patient by reason of their properties, or the delay in adequate treatment thereby brought about, said treatment was neither scientific, nor harmless, and goitre cannot be treated properly or successfully at home without the

Complaint

19 F. T. C.

personal supervision of a physician, and medicines are useless for the removal thereof;

With capacity and tendency to mislead and deceive the consuming public into believing that said various preparations and treatments would remove and cure, without harm to the patient and without operation, any goitre, and induce the purchase thereof in such belief, and with effect of unfairly diverting trade from and otherwise prejudicing and injuring competitors and the public:

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

Mr. E. J. Hornibrook for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Battle Creek Appliance Co., Ltd., a limited copartnership also doing business as W. T. B. Laboratory and as Physicians Treatment and Advisory Co., engaged in the offer and sale direct to the consuming public of liquids, medicines, pills, and salves for the treatment of goitre, and with principal office and place of business in Battle Creek, Mich., and respondent Bobo, individually and as principal owner thereof, 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, in that respondents in periodical and newspaper advertisements and in leaflets distributed to purchasers and prospective purchasers,¹ falsely represent that their said preparations constitute a new and effective and demonstrated treatment, specific, and cure for goitre, which can be used with safety by anyone at home, and which offers a safe means to restore health quickly without operation, and is explained in a free book by an eminent Battle Creek goiter specialist, facts being said preparations are not specifics for said ailment, will not, as asserted, cause it to recede within a day or any other definite period of time, are not harmless, but may and do often permanently or temporarily injure the purchasers thereof, the free book referred to is not the work of an eminent specialist, as set forth, and respondents have not, as asserted, treated 200,000 people for goitre; with capacity and tendency to deceive and mislead the consuming public into the belief that said preparations are specifics for goitre, which will remedy and

¹ Respondent's advertisements as alleged and quoted in the complaint may be found set forth in the findings, *infra*, at pp. 386-387.

cure without operation any goitre, and with effect of inducing purchaser thereof in such belief, and unfairly diverting trade from competitors; to their prejudice and injury and that of the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 21st day of December, 1933, issued against and thereafter served its complaint upon respondents, Battle Creek Appliance Company, Ltd., and W. Thompson Bobo, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents, having entered their appearances and having filed their answers to said complaint, hearings were had before a trial examiner heretofore duly appointed, testimony was heard, and evidence taken in support of the charges stated in the complaint, and in opposition thereto; and on September 7, 1934, the Commission accepted a stipulation in lieu of testimony on the subject of competition herein; which stipulation was signed and executed on the 28th day of August, 1934, by William T. Kelley, acting chief counsel for the Federal Trade Commission, and John A. Nash, attorney for respondents; which stipulation has become and is a part of the record herein. Thereafter, 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Battle Creek Appliance Company, Ltd., is a limited copartnership organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in the city of Battle Creek, in said State. The respondent, limited copartnership, is known also as and has conducted the business hereinafter described under the name and style of W. T. B. Laboratories. The respondent, limited copartnership, is known also as and has conducted the business hereinafter described under the name and style of Physicians' Treatment and Advisory Company. Respondent, W. Thompson Bobo, departed this life after complaint was filed.

Respondent, Battle Creek Appliance Company, Ltd., is now, and for more than three years last past has been, engaged in the business of offering for sale and selling direct to the consuming public a treatment for use in the human affliction known as goitre.

This treatment consists of, first, a diagnosis made from answers of a patient to questions appearing on a so-called diagnosis chart furnished by respondent; second, liquids, medicines, pills, and salves, and printed instructions for their use; third, printed instructions as to the diet and general care which it is suggested by respondent such patient should impose upon himself.

When contact is made by respondent, Battle Creek Appliance Company, Ltd., with a patient, said diagnosis chart and a "free book" called, "Goitre, its Causes, Dangers, and Treatment", are sent to him. The questions appearing on such chart are to be answered by the patient, who is usually a layman. Respondent, Battle Creek Appliance Company, Ltd., maintains that from these answers it can determine whether a patient has goitre and, if so, the particular type of goitre with which such patient is afflicted, and if so afflicted it can properly and efficaciously treat the same by mail, without having seen such patient.

After a diagnosis of goitre has been made a contract is entered into, whereby respondent, Battle Creek Appliance Company, Ltd., is to be paid for its treatment of the patient's said supposed affliction the sum of \$10 for four weeks' treatment, and medicines are prepared by respondent, Battle Creek Appliance Company, Ltd., and, together with printed instructions for their use, are transported from respondent's place of business in the city of Battle Creek, State of Michigan, into and through other States of the United States, to the purchasers thereof, located in all of the States of the United States.

PAR. 2. In the course and conduct of its said business, respondent, Battle Creek Appliance Company, Ltd., is in competition with individuals, partnerships, and corporations engaged in the sale and transportation of liquids, medicines, pills, and salves, used for the treatment of goitre, in commerce between and among various States of the United States.

There are many large pharmaceutical houses selling drugs, medicines, pills, and salves, for use in the treatment of goitre to be administered on prescriptions of physicians, and which sell the same to jobbers, wholesale and retail drug stores, hospitals, and boards of health, in the several States and cause the same to be transported from their places of business into and through other States to the respective points of location of such jobbers, stores, hospitals, and boards of health.

Findings

Some of these drugs, medicines, pills, and salves are:

Burnham's Soluble Iodine, manufactured by Burnham's Soluble Iodine Co., of Auburndale, Mass., and Amend's Laboratory, of New York City, N. Y.

Lugol's Solution of Iodine, manufactured by Sharp & Dohme, of Baltimore, Md.

Wampole's Organidin, manufactured by Henry K. Wampole & Co., of Philadelphia, Pa.

Lipo-Iodin, manufactured by Ciba & Co., of New York, N. Y.

Iodalbin, manufactured by Park-Davis, of Detroit, Mich.

Dessicated Thyroid, manufactured by Armour & Co., Chicago, Ill.; Park-Davis, Detroit, Mich.; Burroughs-Wellcome, New York, N. Y., and others.

Stearodine, manufactured by Park-Davis, Detroit.

Oridine, manufactured by Eli Lilly & Co., Indianapolis, Ind.

Thyroidectine, manufactured by Park-Davis & Co., Detroit.

Thyroxin, manufactured by Squibbs & Son, of New York and Chicago.

One or more of these said drugs or medicines is prescribed by physicians in all parts of the United States in the treatment of goitre.

These said drugs or medicines are sold and shipped in interstate commerce by the said manufacturers thereof, to jobbers, to retail drug stores, and to hospitals and boards of health. The said jobbers thereof sell and ship the same in interstate commerce to retail drug stores, hospitals, and boards of health.

A large majority of the retail drug stores in the United States carry one or more of said drugs or medicines, to be sold, and they are sold, upon prescriptions of physicians.

Said drugs and medicines are sold to persons afflicted with goitre, upon prescriptions of physicians in the District of Columbia, in Ohio, Michigan, Indiana, Illinois, Wisconsin, and in other States.

PAR. 3. Up until the time of his death and for twenty years prior thereto, the late respondent, W. Thompson Bobo, had been treating goitre at Battle Creek, Mich., by mail. For a period of about thirty years he was a physician and was licensed to practice as such during said time under the laws of the State of Michigan, and since the legal existence of respondent, Battle Creek Appliance Company, Ltd., and up until the time of his demise he was associated with the respondent, Battle Creek Appliance Company, Ltd., in the treatment of goitre in the manner herein described. For about three years last past the respondent, Battle Creek Appliance Company, Ltd., has had in its employ a Dr. Henry J. Enright who is also a physician

Findings

19 F. T. C.

and licensed to practice as such by the State of Illinois, and who has been associated with respondent, Battle Creek Appliance Company, Ltd., in the treatment of goitre in the manner herein described.

Respondent, Battle Creek Appliance Company, Ltd., causes some patients to be treated after physical examinations at its own offices in Battle Creek, but the great majority of its patients are treated without having been subjected to a physical examination by the mail order methods above described. Its mail order business is directed entirely to the treatment of goitre.

The revenues of respondent's said business range from \$90,000, to \$120,000 per year and have aggregated approximately \$2,000,000.

The respondent, Battle Creek Appliance Company, Ltd., carries in stock large supplies of drugs and medicines to be used by it in the treatment of goitre. This stock inventoried in the month of December 1932 the sum of \$5,000.

PAR. 4. Respondent, Battle Creek Appliance Company, Ltd., advertises its business in newspapers and periodicals circulated among the several States and by means of booklets and leaflets which they publish and distribute to patients and prospective patients located in the several States of the United States. Among the magazines so used are Comfort, The Gentlewoman, Home Friend and Grit. Among the newspapers are the Portland Telegram, Denver Post, Saint Louis Star, Chicago Herald, Toledo Times, Cleveland News, and Detroit Free Press. Respondent spends in such advertising approximately from \$20,000 to \$30,000 a year. These advertisements, leaflets and booklets contain, among others, the following typical representations:

A new treatment for goitre has been developed by the W. T. B. Laboratories, 2152 Sanborn Building, Battle Creek, Mich., which many believe will prove to be a long-sought specific for this unsightly and dangerous disease. Many of the largest and most hideous goitres begin to recede almost in a day. They gradually get smaller, and in many cases are entirely gone in a few weeks. It is equally efficient in cases of toxic and so-called inside goitre. The treatment is harmless and anyone can use it with perfect safety at home.

* * * the relief you seek cannot be further denied you should you show the same determination which actuated others to seek my help, induce you to accept my services and employ my treatment to overcome your goitrous condition.

Free 44-page book explains all about how you can rid yourself of goitre right at home.

Surgery should never be considered except as a last resort, and not until every other means has been thoroughly exhausted.

In the course of over twenty years the Physicians' Treatment and Advisory Company has been asked many times during a day, "Can you remove the goitre without injury to my general health?" "Is the treatment safe?" The answer is positively and unequivocally, "Yes".

Now—today—the means of recovery are laid before you. The Physicians' Treatment and Advisory Company's methods and treatments are founded on the best and latest known to progressive science.

The adoption of the treatment offers a safe means to quickly restore health, without the dangers attending an operation.

END GOITRE QUICK

200,000 others have treated goitre at home by this harmless easy method. Ends goitre quick without danger or operation.

Method explained in big illustrated 44-page free book by eminent Battle Creek Goitre Specialist.

In one advertisement respondent, Battle Creek Appliance Company, Ltd., depicts to women, one of whom is represented as saying, "My goitre's gone * * * see?"

The book, "Goitre, its Causes, Dangers, and Treatment", which is furnished each prospective patient, as aforesaid, contains many purported testimonials of lay persons who claim therein that they have been cured of goitre by respondent's said treatment. Such members of the laity are not able to truthfully say whether they ever had goitre or whether this affliction had been cured or relieved by respondent's said treatment.

The advertisements and representations described last above are false and misleading in that in truth and in fact the said liquids, medicines, pills, and salves for the treatment and remedy of goitre, so advertised, offered for sale and sold, are not specifics for goitre nor will the use of said liquids, medicines, pills and salves cause a goitre to recede within one day or within any other definite period of time; in that the said liquids or medicines, pills, and salves are not harmless, and when used by purchasers thereof in accordance with the directions furnished by respondent, Battle Creek Appliance Company, Ltd., may, and often do, permanently or temporarily injure such purchasers either as a result of the effects of the properties in the said liquids, medicines, pills, and salves furnished by respondent for the remedy and treatment of goitre or because of consequent postponement of proper treatment for goitre; in that respondent's said treatment is not a scientific treatment for goitre and in that goitre cannot properly or successfully be treated at home without the personal supervision of a physician.

PAR. 5. Goitre has been classified in the record as simple goitre, cystic goitre, toxic goitre and adolescent goitre. Simple goitre is simply an enlarged thyroid; it is sometimes called nontoxic goitre. Cystic goitre is one where there is a cyst within the thyroid gland filled with fluid, sometimes blood. Adolescent goitre is generally found in girls at puberty—the goitre of adolescence. Toxic goitre,

Findings

19 F. T. C.

which is sometimes called Grave's Disease, causes great toxicity or poisoning of the system. These goitres usually, but not always, manifest themselves by swellings or enlargements. In the case of cystic goitre there may be a swelling if the cyst is large.

There may be swellings about the neck and throat which are due to an enlarged gland, that do not indicate a goitrous condition at all.

Cystic goitres may not be removed by the use of drugs—only surgery will remove that type. Simple or nontoxic goitres may not be removed by drugs. If this type does not disappear naturally, sometimes they become very large and only surgery will remove them. Adolescent goitres usually correct themselves, disappearing after six months or a year. In the case of toxic goitre, medicine is given to support the heart and nature takes its course in removing it, but if not so removed, surgery must be resorted to. In all classes of goitre medicines are useless, except in a case of toxic goitre, and in goitres of that type medicine is given not to cure or remove the goitre, but to assist nature in doing so. Respondent, Battle Creek Appliance Company, Ltd., prescribes medicines for all types of goitres.

Dr. Carl B. Wagner, Dr. Adelbert Klaptoz, and Dr. A. S. Park are experts who testified for the Commission. They deny that goitre can be adequately diagnosed from the information supplied to answers to respondent's questionnaire or by any other means short of a physical examination. They deny the claimed effectiveness of respondent's medicines.

Dr. Wagner, who is a teacher in the Illinois Medical College and Loyola University, says that toxic goitre is the only kind that should be treated with medicines and that all cases of cystic goitre should be treated surgically; and concludes that respondent's methods are worthless in the treatment of simple goitre, including the cystic and adolescent types.

Dr. Klaptoz, a graduate of the University of Vienna, in 1910, is of the opinion that medicines have no value in the treatment of cystic goitre or some of the types of simple goitre, and that toxic goitre is incurable by the use of medicine. He states some of the drugs used by the respondent, Battle Creek Appliance Company, Ltd., contain iodine and the use of such might make some goitres worse.

Dr. Park, who has had twenty-five years' experience in the general practice of medicine, says that some cases of simple goitre, including all cases of the cystic type, cannot be efficaciously treated with medicines; that most cases of toxic goitre cannot be successfully treated medicinally; and that surgery is the proper treatment for all cases of cystic goitre. The trend, he says, of modern medical practice

is to rely less on medicine and more on surgery in the treatment of goitre. He says, again, respondent's medicines are not harmless. They include iodine, which is sometimes very dangerous and should never be given except under the personal supervision of a doctor.

PAR. 6. The diagnosis chart referred to above is Commission's Exhibit 28-B, and reads as follows:

DIAGNOSIS CHART

There are several varieties of goitre, each of which requires an entirely different line of treatment, therefore in order that I may accurately determine to which class yours belongs and thus be able to prescribe treatment to meet the needs of your particular case, please fill out this Diagnosis Chart and return to me at once.

Please remember that MUCH depends upon a correct diagnosis and as I am wholly dependent on YOU for my information about your case, I hope you will write me FULLY and HONESTLY. Advise me regarding your general health as well as about the goitre. Often a goitre is the result of other troubles and when this is the case the primary trouble must also be corrected or the goitre will be likely to return even after it has apparently been entirely cured. All correspondence strictly confidential.

PHYSICIANS' TREATMENT AND ADVISORY CO.,

Y. M. C. A. Building, Battle Creek, Mich.

Your Full Name ----- (If a lady and married, use husband's initials). Town or Post Office ----- Street Number or R. F. D. ----- State ----- Age ----- yrs. Weight ----- lbs. Height ----- inches. If you have gained or lost materially in the last year state which and how much. Gained ----- lbs. Lost ----- lbs. Married or single? ----- What is your occupation? ----- Are you blonde or brunette? ----- Would you say your general health is ----- good; ----- fair; ----- poor. Please briefly describe your general troubles -----

Are you constipated? ----- Are you more nervous than formerly? ----- Do you have a tremor (tremble) of the hands and fingers? ----- Is it constant or only after exertion, or when you are nervous and excited? ----- Do you tire more easily than you should? ----- Do you perspire unusually freely? ----- How long have you had goitre? ----- How large around is your neck over the goitre? ----- Is it still growing? ----- Does it ever pain you? ----- Does it choke you or interfere with your breathing or swallowing? ----- Is it larger some days than others? ----- Is the goitre soft or hard? ----- Do you suffer from frequent headaches? ----- Do you have dizzy spells? ----- How often does your heart beat per minute? (Count the number of beats per minute) ----- Do your eyes protrude? ----- Have you ever been treated for goitre? ----- What was the nature of the treatment? ----- Did your mother or father have a goitre? ----- Are there many cases of goitre in your locality? ----- Do you take cold easily? ----- Are your tonsils diseased? ----- Have you any bad teeth? ----- Have you ever had a surgical operation and if so what? -----

Findings

19 F. T. C.

IMPORTANT!

One of the most important diagnostic signs of goitre is the location of the swelling or tumor, and that I may have every possible assistance in making a diagnosis of your condition, I wish you would please mark the tumor's exact location on the cut below. Also kindly indicate its approximate size that I may see how far advanced it is. If you have a photograph showing the enlargement, this would be even more instructive. If you can send me a photo, I will return it if you wish. Otherwise I would be pleased to add it to my case files. Neither letter nor photograph will be used for any other purpose without the consent of the sender.

(Drawing of head and throat of a young lady)

SPECIAL QUESTIONS FOR LADIES

Is there any noticeable enlargement of the goitre at your periods? -----
 Any aggravation of your nervousness and other symptoms? ----- Are your periods regular? ----- Are they painful? ----- Did childbirth have anything to do with the development of your goitre? -----.

GENERAL REMARKS

 As to the questions on the chart quoted above, the said experts testified as follows:

- Question of chart: How often does your heart beat per minute?
 Answer of experts: Only very intelligent members of the laity can take their own heart beat accurately.
- Question of chart: Are your tonsils diseased?
 Answer of experts: No connection between that and goitre.
- Question of chart: Do your eyes protrude?
 Answer of experts: Protrusion of the eyes may be natural.
- Question of chart: Are you married or single?
 Answer of experts: An answer to this question would not aid a physician in making a diagnosis as to goitre.
- Question of chart: What is your occupation?
 Answer of experts: An answer to this question would not aid a physician in making a diagnosis as to goitre.
- Question of chart: Are you blonde or brunette?
 Answer of experts: I do not think answer to this question would aid.
- Question of chart: What is the condition of your health, ----- poor, ----- good, or ----- fair?
 Answer of experts: An answer to this question would not aid a diagnosis as to goitre.
- Question of chart: Are you constipated?
 Answer of experts: On the contrary, a person with toxic goitre has diarrhea.
- Question of chart: Are you nervous?
 Answer of experts: There are many diseases of the human body that bring about nervousness.
- Question of chart: Do you perspire freely? Do you tire easily?
 Answer of experts: Many diseases have these symptoms.

Question of chart: Have you goitre?

Answer of experts: A lay person cannot tell whether he has a cystic or toxic, or a non-toxic goitre.

Question of chart: Do you have headaches, dizzy spells?

Answer of experts: Lots of people have dizzy spells and headaches and do not have goitre.

Question of chart: Did your mother or father have a goitre?

Answer of experts: The fact that the mother or father had goitre would not add to the diagnosis.

Question of chart: Are your teeth bad?

Answer of experts: Bad teeth do not indicate goitre.

Question of chart: Do you have tremors?

Answer of experts: Tremors do not necessarily pertain to goitre.

Goitre cannot be adequately diagnosed from answers to the said questions in the said diagnosis chart made by the laity, or through the information contained in said free booklets or by any other means short of a physical examination.

The attempted diagnosis of the respondent, Battle Creek Appliance Company, Ltd., is a part of the treatment for which a patient pays his said \$10 per month. Without correct diagnosis a treatment can be and is of no avail in cases of goitre.

A correct diagnosis as to goitre cannot be made without a careful physical examination of the patient by a skilled physician. A correct diagnosis as to goitre cannot be made from answers to the questions of the said diagnosis chart.

PAR. 7. The false, misleading, and deceptive statements and representations referred to in paragraph 4 hereof and the said use by respondent, Battle Creek Appliance Company, Ltd., of the said diagnosis chart and Free Book have and have had the capacity and tendency to deceive and mislead the consuming public into the belief that the respondent's liquids, medicines, pills, salves, and treatments will remove and cure without harm to the patient, and without an operation, any goitre. In reliance upon such erroneous belief, the consuming public has been induced to purchase from the respondent, Battle Creek Appliance Company, Ltd., the said liquids, medicines, pills and salves, and treatment for goitre offered for sale and sold by the respondent, Battle Creek Appliance Company, Ltd., as aforesaid.

PAR. 8. The use by respondent, Battle Creek Appliance Company, Ltd., of the false, misleading, and deceptive statements and representations heretofore set forth and described constitute practices or methods of competition in interstate commerce which tend to and do prejudice and injure the public and unfairly divert trade from and otherwise prejudice and injure respondent's competitors.

Order

19 F. T. C.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding, having come on to be heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and the briefs of the attorney for the Commission and of the attorney for the respondent, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusions that the respondent, Battle Creek Appliance Co., Ltd., had violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the Commission being fully advised in the premises—

It is now ordered, That the respondent, Battle Creek Appliance Co., Ltd., its agents, associates, employees, and representatives, in connection with the advertising, offering for sale, or sale in interstate commerce and in the District of Columbia, of liquids, medicines, pills, salves, and treatments for the human affliction known as goitre, cease and desist from representing in any manner, including by or through the use of testimonials and endorsements, or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, books or booklets, letters, or otherwise:

(1) That goitre can be or has been correctly diagnosed by said respondent from answers made by the laity to questions propounded by respondent through the mails;

(2) That the presence of goitre can be determined or the type of goitre can be diagnosed without personal examination of a patient by a skilled physician;

(3) That said respondent can or has successfully treated goitre by mail;

(4) That said respondent can or has successfully treated goitre patients in their homes without the personal supervision and services of a skilled physician in such treatment;

381

Order

(5) That said respondent's medicines or treatment will cure or remove goitre, or cause the same to recede or that they are specifics for goitre;

(6) That the use of medicines is proper treatment in all types of goitre;

(7) That surgery is unnecessary or can with safety be postponed in the treatment of all types of goitre;

(8) That said respondent's methods of diagnosing goitre and treating the same by mail are scientific or safe or harmless.

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

IN THE MATTER OF
GEORGE ZIEGLER COMPANY

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

Docket 1787. Complaint, Apr. 28, 1930—Decision, Nov. 20, 1934

Where a corporation engaged in the manufacture and sale of candy, including three so-called "break and take" assortments, with explanatory display cards, composed of (1) chocolate-covered penny candies of uniform size, shape, and quality, together with a number of larger pieces given as prizes to chance purchasers of a relatively few of said candies, the color of the concealed centers of which differed from that of the others, and also together with an article of merchandise given to the purchaser of the last penny piece in the assortment, (2) penny packages composed chiefly of three white candy wafers wrapped and concealed in tinfoil, together with a number of larger pieces given as prizes to chance purchasers of one of a relatively few of such packages, within which there was enclosed one pink along with two white wafers, (3) individually wrapped, penny, chocolate candies of uniform size, shape, and quality, together with larger pieces given as prizes to chance purchasers of one of a relatively few of said candies, within the wrappers of which a slip containing the word "winner" was enclosed and concealed—

Sold said various assortments and display cards, so packed and assembled that they might and would be resold through such lottery or gaming devices and could not be sold otherwise, without unpacking, disassembling, and rearranging the same, to wholesalers, jobbers, and retailers, with knowledge that they would thus be resold to the consuming public, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers who sell candy by such methods with the means of violating the laws of the several States, and who therefore refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With result that some of its competitors, who can compete on even terms only through following such practice to meet the demand and preference for such candy from small retailers and the children of nearby schools, were put at a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the former to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, gambling by children was taught and encouraged, and sales of so-called "straight goods" with their larger pieces, or better quality, were decreased by the competition, principally, of the gambling or lottery feature connected with the other:

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

Mr. Henry C. Lank for the Commission.

Mr. Herbert G. Ziegler, of Milwaukee, Wis., 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 George Ziegler Company, 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 Wisconsin, with its principal office and place of business located in the city of Milwaukee, State of Wisconsin. 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 Milwaukee, State of Wisconsin, 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 of 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, shape, and quality, together with a number of larger pieces of candy and an article of merchandise. The larger pieces of candies and the article of merchandise are to be given as prizes to purchasers of said chocolate-covered candies of a uniform size, shape, and quality in the following manner:

The majority of the said chocolate-covered candies contained in said assortments have centers of the same color, but a small number of said chocolate-covered candies have centers of a different color. Said pieces of candy 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 candy 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 heretofore referred to. The purchaser of the last piece of the afore-

Complaint

19 F. T. C.

said chocolate-covered candies of a uniform size, shape, and quality in said assortments, is entitled to receive and is to be given free of charge the article 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, thus procure one of the said larger pieces of candy or the article of merchandise 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 bears a legend and statement informing the reader which color of the said colored center candies contained in said assortment entitle the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive the article of merchandise free of charge.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said candy assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale together 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 different from the centers of the majority of the pieces of candy contained in said assortments 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 the article 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 candy and the said article of merchandise 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 certain pieces of candy or the article of 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 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, 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, George Ziegler Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer to the complaint, the case was set down for the taking of testimony before an examiner of the Commission, and evidence was offered by counsel for the Commission. No testimony was offered for the respondent.

Thereupon, this proceeding came on for hearing on the briefs of counsel for the Commission and upon the record. The Commission, now having considered the matter 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, George Ziegler Company, is a corporation organized under the laws of the State of Wisconsin with its principal office and place of business in the city of Milwaukee, State of Wisconsin. Respondent is now, and for more than ten years last past, has been engaged in the manufacture of candy in Milwaukee, Wis., and in the sale and distribution of said candy to wholesale dealers and jobbers, and to retail dealers in the State of Wisconsin 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 Wisconsin and in the States of the United States other than the State of Wisconsin. 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. Among the candies manufactured and sold by respondent was an assortment of candy 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 another article of merchandise. The larger pieces of candy and the other articles

of merchandise were given as prizes to purchasers of said chocolate-covered candies of a uniform size, shape, and quality, in the following manner:

The majority of the said chocolate-covered candies contained in said assortment had centers of the same color, but a small number of said chocolate-covered candies had centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retailed at the price of 1 cent each, but the purchaser who procured one of said pieces of candy having a center of a different color than the majority was entitled to receive and was given free of charge one of the larger pieces of candy above referred to. The purchaser of the last piece of the aforesaid chocolate-covered candies of a uniform size, shape, and quality was entitled to receive and was given free of charge the other article of merchandise above referred to. The aforesaid purchasers of said candies who procured 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 assortment, thus procured one of the said larger pieces of candy or the other article of merchandise wholly by lot or chance.

PAR. 3. Subsequent to the issuance of the complaint in this case but prior to the taking of testimony, the respondent has been manufacturing and distributing assortments composed of a number of candy wafers together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said candy wafers in the following manner:

The said candy wafers are wrapped with tinfoil in small bundles containing three of the said wafers. The majority of these small bundles contain three white wafers but a small number of the said bundles contain two white and one pink wafer. The said bundles containing three wafers in said assortment retail at the price of 1 cent each, but the purchasers who procure one of the said bundles with a pink wafer and two white wafers are entitled to receive and are given free of charge one of the said larger pieces of candy above referred to. The wafers are so wrapped with the tinfoil that the color thereof is effectively concealed from the prospective purchaser until after a selection has been made and the wrapper removed. The aforesaid purchaser of said candy wafers who procures a bundle containing a pink wafer thus procures one of the said larger pieces of candy wholly by lot or chance. The assortment as above described and which the respondent was distributing at the time of the taking of the testimony contained 160 bundles or packages of candy wafers retailing at 1 cent each, 30 of which contained a pink wafer and were prize winners.

PAR. 4. Subsequent to the issuance of the complaint but prior to the taking of testimony herein, the respondent has also been manufacturing and distributing an assortment of candy composed of a number of pieces of chocolate candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are given as prizes to purchasers of said chocolate candies in the following manner:

The said pieces of chocolate candy in said assortment are contained within a wrapper and a small number of these said pieces of chocolate candy also have within the wrapper a small printed slip bearing the word "winner". The said pieces of chocolate candy of 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 pieces of chocolate candy with the printed slip bearing the word "winner" contained within the wrapper are entitled to receive and are given free of charge one of the said larger pieces of candy above referred to. The wrapper within which the piece of chocolate candy is contained effectively conceals from the prospective purchaser which of the pieces of candy have the printed slip within the wrapper until after a selection has been made and the wrapper removed. The aforesaid purchasers of said candy who procure a candy containing within the wrapper thereof a printed slip bearing the word "winner" thus procure one of the said larger pieces of candy wholly by lot or chance. The assortment as above described and which respondent was distributing at the time of the taking of testimony, contained 150 pieces of chocolate candy retailing at 1 cent each, 30 of which contained within the wrapper a printed slip and were prize winners.

PAR. 5. Subsequent to the issuance of the complaint herein but prior to the taking of testimony, the respondent discontinued the manufacture and distribution of the assortment of candy described in paragraph 2 of these findings. This Commission, however, has no assurance that the respondent will not again begin the distribution of this assortment.

PAR. 6. The respondent furnished with each of said assortments as described in paragraphs 2, 3, and 4 above a display card bearing a legend printed thereon stating that the candy was being sold by the methods described. (Com. Ex. 1, 2, and 3.)¹

PAR. 7. The lottery, prize or draw packages described in paragraphs 2, 3, and 4 above are generally referred to in the candy industry as "break and take" packages. The packages or assortments of

¹ Not published.

Findings

19 F. T. O.

candy without the lottery prizes or draw features in connection with their resale to the public are generally referred to in the candy industry or trade as "straight goods". These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 8. Numerous retail dealers purchase the packages described in paragraphs 2, 3, and 4 above, either from respondent or from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display said packages for sale to the public as packed by the respondent, and with the display card furnished by the respondent, and the candy contained in said packages is sold and distributed to the consuming public in the manner suggested by respondent.

PAR. 9. All sales made by respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber, or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the display card enclosed in each package without alteration or rearrangement. An examination of the packages or assortments of candy described in paragraphs 2, 3, and 4 herein, as packed, assembled, and sold by respondent, shows that said packages or assortments cannot be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said packages or assortments.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, of packages and assortments of candy assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers by lot or chance, and it packs and assembles such candy in the way and manner described so that it may and shall be resold to the public by lot or chance by said retail dealers.

PAR. 10. The sale and distribution of candy by the retailers by the methods described in the findings as to the facts herein, is a sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many competitors regard such method of sale and distribution as normally bad and encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and is providing retail

merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the "break and take" method, buy respondent's products and the products of others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight goods" candy show a continued decrease.

In order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 11. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the "break and take" package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize-package candy because of the gambling feature connected with its sale. The sale and distribution of "break and take" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 12. The pieces of candy in the "break and take" packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of "straight goods" candy, or

Conclusion

19 F. T. C.

the quality of the candy in the "break and take" packages is poorer than that in the "straight goods" assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the "break and take" goods, or to compensate for the reduced price at which some of the pieces of candy are sold.

The evidence in this case shows that in the respondent's "break and take" packages received by the individual purchasers that the pieces are smaller or the quantity less than in corresponding sales of "straight goods." The evidence disclosed that no distinction in quality was made.

PAR. 13. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize packages of assortments of candy and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" candy, and manufacturers of the "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight goods" candy is principally due to the gambling or lottery feature indicated with the "break and take" candy.

PAR. 14. In addition to the assortments described in paragraphs 2, 3, and 4 herein, the respondent manufactures candy which it sells to wholesale dealers and jobbers and to retail dealers without any lottery or chance features. It began the manufacture and distribution of the assortments as described in paragraphs 2, 3, and 4, due to the effect on its business of the sale of similar packages by its competitors. The annual volume of business of the respondent has, for the past several years, been in excess of \$1,000,000. The "break and take" business of the respondent represents approximately 5 percent of the total volume of its business.

PAR. 15. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States, and some of the said States have laws making lotteries and gambling devices penal offenses.

CONCLUSION

The aforesaid acts and practices of respondent, George Ziegler Company, 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 a violation of Section 5 of an Act of Congress

approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

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

It is now ordered, That the respondent, George Ziegler Company, 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 to be made or may be made 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 having centers of different colors, 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.

(4) Packing or assembling in the same package or assortment of candy for sale to the public at retail bundles or packages of candy wafers of uniform size, shape, and quality containing wafers of different colors, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a bundle or package containing a wafer of a particular color.

(5) 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 contain within their wrappers printed slips bearing the word "winner" together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to purchasers procuring a piece of candy containing said printed slip within the wrapper thereof.

(6) Furnishing to wholesale dealers, jobbers, and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend or legends, or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(7) Furnishing to wholesale dealers, jobbers, and retail dealers display cards or other printed matter for use in connection with the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

(a) That upon the obtaining of the ultimate purchaser of a piece of candy with a particular colored center, a larger piece of candy will be given free to said purchaser.

(b) That upon the obtaining of the ultimate purchaser of a particular colored candy wafer, a larger piece of candy will be given free.

(c) That upon the obtaining by the ultimate purchaser of a piece of candy containing within the wrapper thereof a printed ticket, a larger piece of candy will be given free to said purchaser.

It is further ordered, That the respondent, George Ziegler Company, 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

BENJAMIN D. RITHOLZ TRADING AS CHICAGO DENTISTS
AND CHICAGO DENTAL HOUSE, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2140. Complaint, Dec. 21, 1933—Decision, Nov. 20, 1934*

Where an individual engaged in the manufacture and sale, by mail of dental plates, made by him from impressions taken by customers of their own mouths, in competition with dental laboratories, which make such products for dentists, from impressions taken by the dentist from the patient, and subject to adjustment, fitting, and return, where necessary; in advertising his said product in newspapers and magazines and advertisements in circulars and pamphlets—

- (a) Grossly misrepresented and exaggerated the value of said plates through such statements as "Amazing offer! Dental plates on 30-day trial Free! Was \$50 now \$7.50—100 percent satisfaction or no cost—Why pay \$50 to \$75 for plates?" and other statements of similar tenor, facts being he had never received said higher prices, the average cost of teeth used in his plates was from \$1 to \$1.60 a set, and said plates were regularly offered at the prices falsely stated as new or reduced;
- (b) Represented that each patient could take his own impression and that he could make therefrom teeth that satisfied and fitted perfectly, through such statements as "Our experiments proved that we could eliminate the personal contact between dentists and patient and make teeth that satisfy by the very simple process of having each patient take his or her own impression just exactly like any expert dentist does in his own office", through "adopting exactly the same scientific methods used by dentists everywhere", and that all his plates were "made of fine quality, selected materials, in a modern, completely equipped dental laboratory", with great care at every step, by expert dental technicians supervised by dental surgeons and falsely set forth the name of a certain dentist as "Chief of staff of Chicago dentists", and as purported signer of certain trade checks given by it, facts being it is impossible to manufacture satisfactory plates from self-taken impressions made by a person with whom a dentist has had no personal contact, and he was unable without the services of a dentist to adopt and use the scientific methods used by a dentist, the plates were poorly made and not adapted to the purposes for which sold or the use of the particular customer, did not fit, and were liable to cause difficulties of one sort or another, including such irritations as sometimes lead to cancer, his laboratory was not supervised by dental surgeons, and there were no dentists connected with that part of his business;
- (c) Represented that his methods were scientific and had the approval of dentists through such statements as "our scientific methods approved by dentists" and through purported testimonials in which the supposed dentist signers were made to give their unqualified approval to his system of fitting dental plates as thoroughly scientific and practicable and one capable of producing artificial teeth for patients which would give them full

power of mastication and restore the natural facial contour and that might be worn with ease and comfort, and as endorsing and praising his guarantee and methods, facts being said dentists had never signed, made, or authorized any such false statements, and their signatures had either been procured by a ruse or for a different purpose;

- (d) Attached to the trade name employed by him, the abbreviation "Inc.," and represented that he guaranteed his plates were of fine quality and made in a modern, complete dental laboratory, under personal supervision of regular, licensed dentists, and that his plates would give full power of mastication and restore the natural facial expression, and that they could be worn with ease and comfort, and money would be refunded in full to those who did not wish to keep them for any reason, facts being the business was not incorporated, and he declined to respect the terms of his guarantee and refund the money paid, notwithstanding failure of said inferior, poorly made plates to give service or satisfaction, until outside influences were brought to bear;

With tendency and capacity to mislead and deceive purchasers into the belief that such representations were true, value of said plates was far in excess of the facts, they would give full power of mastication, restore the natural facial expression, and enable the purchaser to wear same with ease and comfort, making thereof was supervised by regular licensed doctors of dental surgery and they were scientifically made and of good material, it was practicable to make satisfactory and well-fitting and serviceable dental plates from impressions taken by the laity, his methods were endorsed by the profession, he would cheerfully refund the money for products found unsatisfactory, and the business was incorporated, and into influencing them to purchase said plates in such mistaken beliefs, and 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. E. J. Hornibrook for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Benjamin D. Ritholz, an individual trading as Chicago Dentists and/or as Chicago Dental House, 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. That respondent, Benjamin D. Ritholz, is an individual trading or operating as Chicago Dentists and/or as Chicago Dental House, Inc., with his principal office and place of busi-

ness located in the city of Chicago, State of Illinois, and that he is engaged in the business of selling and distributing, in interstate commerce, artificial teeth, dental plates, dentures, and other dental products, and that respondent, in the course and conduct of his said business causes said artificial teeth, dental plates, dentures, and other dental products sold by him to be transported in interstate commerce from his place of business in the State of Illinois to, into, and through States of the United States other than the State of Illinois to the persons to whom said products have been sold. In the course and conduct of such business respondent was at all times hereinafter mentioned, and still is, in competition with other individuals, firms, partnerships, and corporations likewise engaged in interstate commerce in the sale and distribution of similar dental products.

PAR. 2. That respondent, in the course and conduct of his business as described in paragraph 1 hereof, has offered for sale and sold dental plates and other dental products and in connection with the said offerings for sale and sales has made the following statements or representations in advertisements and in circulars or pamphlets distributed by him in interstate commerce:

- Holdfast, regular value \$50, now reduced to \$7.50.
- Perfection plate, regular value \$60, now reduced to \$3.50.
- Boralite, regularly priced \$75, now only \$10.50.
- Roofless Plate, regular value \$150, now only \$32.50.
- Parfait-Naturale, regular value \$150, reduced to only \$29.50.
- Gold Dust Plate, regular value \$70, now reduced to \$9.50.
- V-Implant, regular value \$90, now only \$14.50.
- Hankolite, regular value \$125, reduced to only \$24.50.

When in truth and in fact the dental plates as above described had been manufactured by the respondent at the cost of, approximately, one dollar each only, and had never been sold by him at the alleged regular value or prices stated but were and had been regularly offered for sale at the prices falsely stated as being new or reduced prices.

PAR. 3. That the respondent, in connection with the offering for sale and sale of his dental products as aforesaid, has represented and represents that regularly licensed doctors of dental surgery personally supervised and supervise the filling of orders placed by mail-order customers and that the dental plates sold by him to mail-order customers had been and are built or constructed under the supervision of regularly licensed doctors of dental surgery, when in truth and in fact no licensed dentist or dental surgeon supervises or has supervised the construction of said dental plates or said mail-order business or has or had anything to do with same. Respondent

Complaint

19 F. T. C.

also has distributed to those persons from whom he solicits business in interstate commerce form letters upon which the following letterhead appeared:

OFFICE OF D. L. M. MASS
Doctor of Dental Surgery
Chief of Staff

Said letters purporting to be signed by Dr. L. M. Mass, chief of staff, in which letters various representations with respect to respondent's products were made, when in fact said L. M. Mass did not sign said letters or authorize the use of his signature and when in truth and in fact said Mass had nothing whatsoever to do with the construction of the products referred to in said letters.

PAR. 4. That respondent in advertisements, pamphlets or circulars distributed by him in interstate commerce in connection with the offering for sale or sale of his aforesaid dental products has made and makes the following statements or representations:

Solving a great problem—In our research work we came to the indisputable conclusion that with a correct impression of the mouth to be fitted, it was possible for us to make perfect fitting teeth at a price saving that was truly phenomenal. Our experiments proved that we could eliminate the personal contact between dentist and patient and make *teeth that satisfy* by the very simple process of having each patient take his or her own impression just exactly like any expert dentist does in his own office. This we were able to do by adopting exactly the same scientific methods used by dentists everywhere.

Our system has been perfected to a point where it is so easy for the patient, so exact and so certain of results that we are glad to guarantee full 100 per cent satisfaction in each and every case or money cheerfully refunded upon return of the teeth. This guarantee can mean only one thing—that we know *that we can fit perfectly by mail*.

A few people write in saying they fear they cannot take an impression of their own mouth good enough to enable us to make a satisfactory and well fitting set of teeth. Don't let this worry you for one minute. It's about as simple as two times two equals four. A child could do it quite well.

Your future happiness, your health, perhaps your very life depend upon securing satisfactory teeth. Don't take chances with them. Take advantage of the splendid service we offer. * * *

When in truth and in fact it is rarely, if ever possible to manufacture dental plates from a self-taken impression, made by a person with whom the technician or manufacturer has had no personal contact, and when in truth and in fact respondent was not and is not able, in carrying on his business by mail and without personal contact with his customers, to adopt exactly the same scientific methods used by dentists who come in personal contact with their clients, and when in truth and in fact respondent did not and does not cheerfully or otherwise refund the money paid for his products in

each and every case when said products are returned as unsatisfactory.

PAR. 5. That respondent in letters, circulars or advertisements distributed by him in interstate commerce in connection with the offer for sale or sale of his aforesaid dental products makes the following representations:

All plates specially made by expert dental technicians to meet your exact needs.

Great care is used in every step from the time we receive your order until your plates are on their way to bring you comfort, joy and satisfaction. Every operation in plate making is carefully watched and there is constant checking with the original impression to see that every little ridge or depression is faithfully reproduced.

We unconditionally guarantee all our dental plates to be made of fine quality, selected materials in modern, completely equipped dental laboratory by expert dental technicians * * *.

When in truth and in fact the respondent has used in large numbers, in filling orders secured through said representations, defective and discarded teeth or other defective material and has used old door hinges in the construction of articulators; and when in truth and in fact the respondent supplies and has supplied certain of its mail-order customers with old misfits that had been refused by local customers, and uses and has used various and sundry other cheap and defective materials in the construction of his aforesaid dental products; and when in truth and in fact the dental plates sold by respondent to his mail-order customers were not made by expert dental technicians to meet the customers' exact needs, and great care was not used in the construction of said plates or in constant checking with the original impression to see that every little ridge or depression was faithfully reproduced, and when in truth and in fact said dental plates so sold by respondent to its mail-order customers were not of fine quality and selected materials made in a modern, completely equipped dental laboratory by expert dental technicians.

PAR. 6. That respondent in circulars, pamphlets, and in advertisements distributed by him in interstate commerce in connection with the offering for sale or sale of his aforesaid dental products has made and makes the following statements and representations:

**OUR SCIENTIFIC METHOD APPROVED BY DENTISTS AND OUR
ENTHUSIASTIC CUSTOMERS**

Underneath the above statement there appear what purport to be letters of endorsement from certain named dentists, all of Chicago, with addresses different from the address of respondent's place of business, and on the reverse side of a circular entitled "Our Guar-

Complaint

19 F. T. C.

antee", also distributed by the respondent in interstate commerce, appears the following letter:

Dr. L. M. MASS
Dentist

CHICAGO DENTISTS, *Chicago, Ill.*

GENTLEMEN: Your system of fitting dental plates by mail is thoroughly scientific and practical. I am sure you are capable of producing artificial teeth for patients everywhere that will give them full power of mastication, restore the natural facial contour and that may be worn with ease and comfort.

You deserve great praise for the tremendous price savings you are offering the public and with your broad liberal guarantee, I can't see why anyone should ever want to pay the exorbitant prices demanded by many local dentists.

L. M. MASS, D. D. S.

When in truth and in fact the dentist, L. M. Mass, referred to above had never authorized the respondent to use his signature or any statement made by him and had informed the respondent that satisfactory teeth could not be made from self-taken impressions. And when in truth and in fact certain of the dentists named by respondent as having improved his scientific method had never endorsed or approved the method used by respondent.

PAR. 7. That the respondent in connection with the offer for sale and sale of his dental products as aforesaid has represented and represents that certain of his business is being carried on by Chicago Dental House, Inc., importing or implying that said business is being conducted by a corporation, when in truth and in fact Chicago Dental House, Inc., is not a corporation but is merely a trade name under which the respondent is operating and doing business as an individual.

PAR. 8. The above acts and practices and representations of the respondent in the course of advertising, offering for sale and selling and distributing his products in interstate commerce have the capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public in various States of the United States into the belief that the products of respondent were and are of a high grade quality and that they are and that they were being offered to the public at an especially low price, when such were not and are not the facts, and induce and have induced the purchase of respondent's products in reliance on such erroneous beliefs and have tended to divert trade and/or have diverted trade from and otherwise injured competitors of respondent.

PAR. 9. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of

Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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 21st day of December, 1933, issued against and thereafter served its complaint upon respondent, Benjamin D. Ritholz, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner heretofore duly appointed, testimony was heard, and evidence taken in support of the charges stated in 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, makes this its report, stating its findings as to the facts, and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Benjamin D. Ritholz, is an individual who conducts a laboratory in the city of Chicago, State of Illinois, where dental plates and other dental products are manufactured by him. The respondent so manufactures and sells 150 dental plates a week. A very large proportion of the dental plates so manufactured by respondent are shipped by him through the mails to purchasers thereof, many of whom reside outside of the State of Illinois.

In the year 1932 respondent conceived the plan of having the laity take their own impressions for dental plates and, upon receipt of such impressions, making plates therefrom in his said laboratory, and selling and shipping the same by mail to the persons for whom such plates were made. He carried out this plan under the trade names of Chicago Dentists, and Chicago Dental House, Inc., until August 1933. Since then respondent and his copartner, Benjamin Migdall, have been conducting the said business in the same manner and at the same place, as aforesaid, under the firm name of International Dental House.

Respondent's said laboratory is located at 1445 West Jackson Boulevard, in the said city of Chicago. One floor of the building situated thereon is occupied by respondent. In the front part of the

floor space so occupied respondent has dentists employed by him who are engaged in regular dental work in the city of Chicago. These dentists take no part in the manufacturing of said plates. The laboratory of respondent is situated in the rear of the dental office. The work in said laboratory is conducted by technicians and helpers. No dentists supervise the work of making plates.

PAR. 2. There are many dental laboratories in the United States which make and sell dental plates in interstate commerce. All of these, so far as known, make such plates from impressions taken by dentists. The dentists taking such impressions send the same to these laboratories and, upon completion of the plates, the laboratory ships them back to the dentists ordering the same. Such dentists fit them to the patients' mouths. If they do not fit properly other impressions are taken and sent back to such laboratories. Other plates are then made and returned to such dentists. These laboratories ship their said plates to said dentists into and through States other than the States where their said laboratories are located. These said laboratories are found by the Commission to be in competition in interstate commerce with the respondent in the sale of dental plates.

Some of these laboratories are:

The American Dental Company, located in Chicago, which does a business of \$200,000 per year; \$30,000 of this business is transacted outside of the State of Illinois and is conducted with customers residing in about thirty States;

Twentieth Century Dental Laboratory of Chicago, which does a business of about \$40,000 per year; a part of which is done in States other than the State of Illinois;

Standard Dental Laboratory of Chicago, which does an annual business of \$130,000 and has customers in five States;

Ehrhardt & Company, which does a business of about \$100,000 per year, 25 percent of which is outside of the State of Illinois; and many other dental laboratories in the United States which make dental plates and sell and ship the same in interstate commerce.

PAR. 3. William H. Schroll, of the American Dental Company, testified that respondent is taking orders from members of the laity who would otherwise go to local dentists who, as a rule, do not make dental plates but have this firm make them. Martin D. Dinsson, owner of the Twentieth Century Dental Laboratory of Chicago, testified that respondent is a competitor of his in the sale of dental plates. Joseph J. Saslow, of the Standard Dental Laboratory of Chicago, testified that he has lost a lot of business on account of respondent.

Few dentists make their own plates, but a very large percentage of them are made by dental laboratories.

Dental laboratories engaged in the sale of dental plates in interstate commerce are deprived of sales of dental plates by the sales of dental plates made by the respondent, as stated in paragraph 1 hereof.

PAR. 4. Respondent, in the aid of the sale of said dental plates, represents in newspaper and magazine advertisements and in circulars and pamphlets distributed by him in interstate commerce, that such plates are of a value far in excess of the price asked; that regular, licensed doctors of dental surgery personally supervise the making of such plates; that each patient can take his own impression, and that respondent can make therefrom teeth that satisfy and fit perfectly; that all his plates are scientifically made and that his methods of making plates from impressions taken by the laity are endorsed by regular, licensed dentists; that in making such plates he uses only materials of fine quality; that he will give, and does give, a written guarantee with each set of plates providing that if plates are not satisfactory he will cheerfully refund the money to the purchasers thereof; and in such advertising holds out to the purchasers of such plates that they are dealing with a corporation, to wit, the Chicago Dental House, Inc.

Respondent makes contact with those desiring plates through advertisements in newspapers and magazines. Typical of such advertisements is the following, which appeared in the Pathfinder, a magazine of general circulation in the United States.

AMAZING OFFER!

DENTAL PLATES ON 30-DAY TRIAL FREE!

Was \$50 now \$7.50

100 Percent Satisfaction or No Cost

WHY PAY \$50 TO \$75 FOR PLATES?

This amazing offer is made to quickly introduce our new "Hold Fast" Dental Plates in your vicinity. To prove their amazing value we will send you a complete set or just an upper or lower plate as may be required on *30 Days Free Trial!* No continuous painful impression taking or expensive visits to the dentists, or need to spend large sums of money to have the benefits and pleasures of comfortable fitting dental plates. "Hold Fast" Plates will improve your appearance, give you comfort—they are light weight and look natural. All plates specially made by expert dental technicians to meet your exact needs. Positively guaranteed to fit you perfectly and give complete satisfaction or cost nothing. Why pay \$50 and up for plates elsewhere when you can get just as good from us for as low as \$7.50?

Findings

19 F. T. C.

TRY THEM 30 DAYS FREE—FREE TRIAL COUPON

Just try them. That's all we ask. It's our only argument. Prove at our risk how greatly these fine, perfect-fitting teeth will improve your appearance, how perfectly they will enable you to eat what you like and make you look years younger. They are odorless, tasteless, guaranteed nonbreakable, and lifelike in appearance. Take advantage of this *amazing bargain price* and our 30-day *free trial offer today*.

CHICAGO DENTISTS,
Dept. F111, 1445 W. Jackson Blvd., Chicago, Ill.

GENTLEMEN: I want to try your plates.

Name..... Age.....
St. and No.....
R. F. D..... Box.....
Post office..... State.....

CHICAGO DENTISTS
Dept. F111, 1445 W. Jackson Blvd., Chicago, Ill.

When respondent receives replies to such advertisements, he sends through the mails a piece of impression material with instructions to the prospective purchaser as to how to take his own impression for the purpose of making plates therefrom. When this impression is returned, together with an advance of \$2 on the price agreed upon for a set of teeth, the respondent causes the plates to be made and shipped to the purchasers thereof C. O. D. for the balance of the purchase price.

Respondent so advertises the value of his dental plates as follows:

- "Hold-Fast", regular value \$50.00; now reduced to \$7.50;
- "Perfection" plate, regular value \$60.00; now reduced to \$8.50;
- "Boralite" plate, regular price \$75.00; now only \$10.50;
- "Roofless" plate, regular value \$150.00; now only \$32.50;
- "Parfait-Naturelle", regular value \$150.00; reduced to only \$29.50;
- "Gold Dust" plate, regular value \$70.00; now reduced to \$9.50;
- "V-Implant", regular value \$90.00; now only \$14.50;
- "Hankolite", regular value \$125.00; now reduced to only \$24.50.

The respondent admits that he has never received the higher prices stated in his advertisement for plates alone. These prices, he maintains, are such as he has received from local customers who come to his said dental office in Chicago and who, in addition to the plates, receive the services of dentists.

The witness, William Schroll (referred to *supra*), testified with reference to the value of the plate called "Roofless" plate that the manufacturing price would be \$4 to \$6 and retail price would be \$15 to \$35, and that this would include the charge for services of a dentist. The witness, Joseph J. Saslow, connected with the Standard Dental Laboratory of Chicago, testified that his firm would sell the "Roofless" plate to dentists at \$6.35 each; that "Gold Dust"

plate and "Perfection" plate would be sold at \$7.10 each; that "Hankolite" plate would be sold at \$11.10; that "V-Implant" would be sold at \$5.35, and that dentists would charge a fee of \$20 for their services in taking the impressions and adjusting these plates. Witness, Alfred Schaupp, respondent's witness, testified that \$7 is the usual price charged by Chicago laboratories for plain rubber plates, and J. M. Ehrhardt, connected with Ehrhardt & Company, testified that his charge for plates such as the plates referred to above, would be \$6 to \$8 apiece. Dr. R. O. Schlosser testified that the teeth used in respondent's plates would cost a dentist from \$1 to \$1.60 a set.

J. M. Ehrhardt testified that all of the teeth made by respondent cost less than \$1 a set.

It is found that the average cost of teeth used in respondent's said plates is from \$1 to \$1.60 a set, and that the dental plates above described have never been sold by him at the alleged regular value prices stated in the foregoing advertisement, but were and are regularly offered for sale by him at the prices falsely stated as being the new or reduced prices.

In and through the aforesaid media, respondent advertises that he can, and does, make serviceable, satisfactory and well-fitting plates from impressions taken by the person using the same. Typical of these advertisements are the following:

Solving a great problem.—In our research work we came to the indisputable conclusion that with a correct impression of the mouth to be fitted, it was possible for us to make perfect fitting teeth at a price saving that was truly phenomenal. Our experiments proved that we could eliminate the personal contact between dentist and patient and make *teeth that satisfy* by the very simple process of having each patient take his or her own impression just exactly like any expert dentist does in his own office. This we were able to do *by adopting exactly the same scientific methods used by dentists everywhere.*

Our system has been perfected to a point where it is so easy for the patient, so exact and so certain of results, that we are glad to guarantee full 100 percent satisfaction in each and every case or money cheerfully refunded upon return of the teeth. This guarantee can mean only one thing—that we know *that we can fit perfectly by mail.*

A few people write in saying they fear they cannot take an impression of their own mouth good enough to enable us to make a satisfactory and well fitting set of teeth. Don't let this worry you for one minute. It's about as simple as two times two equals four. A child could do it quite well.

Your future happiness, your health, perhaps your very life depend upon securing satisfactory teeth. Don't take chances with them. Take advantage of the splendid service we offer. * * *

All plates specially made by expert dental technicians to meet your exact needs.

Great care is used in every step from the time we receive your order until your plates are on their way to bring you comfort, joy and satisfaction. Every

operation in plate making is carefully watched and there is constant checking with the original impression to see that every little ridge or depression is faithfully reproduced.

We unconditionally guarantee all our dental plates to be made of fine quality, selected materials in modern, completely equipped dental laboratory by expert dental technicians * * *.

Our scientific method approved by dentists and our enthusiastic customers.

It is rarely, if ever, possible to manufacture serviceable dental plates or plates that fit from a self-taken impression made by a person with whom a dentist has had no personal contact, and the fact is that respondent is not able without such contact and the services of a dentist, to adopt and use the scientific methods used by dentists who come in personal contact with their clients.

Dr. R. O. Schlosser was called as a witness. He is professor of Clinical Prosthesis of Northwestern University Dental School at Evanston, Ill.; also, a doctor of dental surgery and a Fellow of the American College of Dentists and a practicing dentist from 1903 to 1918. He testified that a good set of teeth could not be made from the impression made by a patient of his own mouth; that a dentist must not attempt to make impressions without first making a diagnosis of the mouth; that a dentist makes a preliminary impression which only serves as a model by which he can make a second tray which will fit more closely than the tray used for the first impression; that three things are necessary in making the dental plate, to wit: a knowledge of the theory covering the science of denture prosthesis, skill in practical application of these theories, and a proper consideration to each individual step in the procedure. This witness stated:

It is not possible, even for an expert in taking impressions, to merely take an impression of the mouth and build a set of teeth that will comply with the cosmetic masticatory and special requirements.

It is not possible for a layman to take his own impression and get a fairly comfortable fit.

The witness was shown Commission's Exhibits 37-A-F,¹ which are samples of respondent's plates, and said in substance:

The teeth used on the Exhibit 37-A are a cheap grade of teeth. The arrangement of the teeth shows a disregard of the normal curvature of the arrangement of the upper teeth. The arrangement of the teeth to the crest of the ridge of the jawbone is itself faulty, which would have a tendency to protrude the lower lip unduly; would also have the tendency to create considerable undue levers, and because of such, tend to displace the denture very easily.

As to Commission's Exhibit 37-B, the witness, while stating that it was much better than Exhibit 37-A, said that this denture clearly

¹ Exhibits not published.

showed that it was under extended—short on one side. He further said:

Commission's Exhibit 37-C shows another mould of teeth, but again of the cheap variety. Commission's Exhibit 37-D has also the cheap mould of teeth.

As to Commission's Exhibit 37-E, he says:

The only criticism that can be offered to this piece of work is that the teeth apparently were too large for the denture on the side and caused one tooth to be severely ground.

Commission's Exhibit 37-F is the best of the six exhibits, but again it does show some extension of the periphery of the labial on the buccal side, but it may have been displaced during function.

He says that it is not possible for human beings to take their own impressions on printed instructions and get a fairly comfortable fit.

Dr. John S. Kellogg, teacher in the college of dentistry, University of Illinois, and for the past thirteen years in full charge of the practicing dentists of the university, and himself a practicing dentist for four or five years, testified that a layman could not take impressions of his own mouth because of the ignorance of the muscular attachments and the periphery, and gave his reasons therefor as follows:

It is not safe to make an impression where there may be pressable tissues there unless we know where they are. Consequently, I think it is absolutely necessary for a dentist to see the mouth of the patient when he takes the impression. There is danger attendant to the fitting of false teeth without the services of a dentist. Teeth that are unstable, not definitely retained, in other words, that drop and rub up and down, might cause tissue irritation of the special area. We do not know what causes cancer, but we do know that cancer appears in many cases where continued irritation has taken place. We do know that the mouth is an area that is prone to cancer. The moving of the plate, if it is unstable, also causes an absorption of the bone under the soft tissue, and in time those ridges flatten out and render the mouth incapable of wearing the dentures. In other words, the ridges are definitely injured by ill-fitting plates.

Those two things, the lesions which might be caused, and then, of course, the retention of plates if they are not properly fitted—they do not stay up or they do not stay down—are stated by the witness as some of the reasons why he does not think a layman can take an accurate impression.

After examining Commission's Exhibits 37-A, B, and E, which are samples of respondent's plates, the witness stated that they show that the impressions were not correctly taken and that he thought that even a skilled dentist could not get a proper impression by placing impression compound in the patient's mouth and having him bite down on it. He says that even after a dentist has made a careful

examination of the patient's mouth and taken an impression, it frequently happens that some part of the operation has to be repeated on account of some inaccuracy.

Dr. L. M. Mass, a dentist, testified that he told respondent that it was impossible to make plates by impressions secured by his method; that it would be impossible to make a plate without seeing the patient; that he never authorized the respondent or any one else to quote him as saying that respondent's method was scientific or practical.

Respondent advertises that his method of making plates from self-made impressions is a scientific method.

Respondent's methods of taking impressions and making dental plates are not scientific, but they may be dangerous to the life and health of the patient.

The respondent advertises falsely that the laboratory wherein the plates in question are manufactured is supervised by dental surgeons.

Only technicians and ordinary helpers have anything to do with the making of the plates in question and no dentist is engaged or employed in supervising the construction of the dental plates in question.

Dr. L. M. Mass, a dentist once employed in the office in front of the laboratory of the respondent, testified that he did not know of any dentists being connected with the respondent's laboratory.

Frank A. Tomalonas, a technician employed by respondent in his said laboratory from December 1932 to February 1933 testified that no dentists supervised the work in the laboratory during the time that he was employed; that there were dentists employed in the dental operating rooms apart from the laboratories, but that these dentists were practicing dentistry and had nothing to do with the laboratory work.

Raymond Ross, a technician employed by respondent from December 1932 to July 1933 testified that there were no dentists connected with the mail order business while he was employed. Alfred Schraut, employed by respondent as a technician from September 1932 until August 1933 testified that no dentists were employed in respondent's laboratory during said time.

Respondent uses purported testimonials of dentists in advertising his said dental plates. Samples of these purported testimonials are to be found in Commission's Exhibit No. 25, wherein appears purported testimonials from Dr. J. A. Dempsey, Dr. S. Kabill, Dr. A. Meyers, Dr. Thomas H. Logan, and Dr. L. M. Mass.

Such purported testimonials were never signed by the dentists purporting to have signed the same, nor are the statements therein

contained approved or endorsed by them or by any other regularly licensed dentists.

Dr. L. M. Mass was called, and testified that he did not authorize or consent to the use of his picture, as it appears in Commission's Exhibit 2; that he did not authorize the use of his name as it appears in Commission's Exhibits 8, 13, 29, 30-A-B, 33, 33-A and 36, and that he was not chief of staff of Chicago dentists, as the statement on such exhibits implies; that he had nothing whatever to do with the laboratory work of respondent; that he did not authorize the use of his name in any manner in connection with the sale of plates by respondent; that he never endorsed by written testimonial or otherwise respondent's method of making plates; that the name signed to the testimonials used by respondent was his name, but that he never signed the same.

Respondent, as an inducement to purchasers to buy his said plates, sends a check, payable to bearer, in the sum of \$3, and apparently signed by Dr. L. M. Mass. This check is good for \$3 on the purchase price of teeth. Dr. L. M. Mass testified that he never signed such check nor any other check for the Chicago Dentists, and that he did not authorize the use of his name by respondent in that or any other manner. All of these signatures so used in said exhibits were stenciled copies of the original signature of Dr. L. M. Mass. This dentist accounts for respondent's obtaining his original signature and thereby being able to make a copy thereof, from the fact that one time in respondent's office a boy who worked in the printing department came out and told him that Ben (Ritholz) wanted him to write his name on a plain piece of paper, which he did. He thought at the time he signed his name that it was for the purpose of having professional cards printed for use in the dental office, as Ritholz himself had talked about having such cards printed a few days before. The purported testimonial of Dr. L. M. Mass reads as follows:

CHICAGO DENTISTS, *Chicago, Illinois.*

GENTLEMEN: Your system of fitting dental plates by mail is thoroughly scientific and practical. I am sure you are capable of producing artificial teeth for patients everywhere that will give them full power of mastication, restore the natural facial contour, and that may be worn with ease and comfort. You deserve great praise for the tremendous price saving you are offering the public, and with your broad, liberal guarantee I cannot see why any one should ever want to pay the exorbitant prices demanded by many local dentists.

L. M. MASS, D. D. S.

In Commission's Exhibits Nos. 4, 5 and 25 appear the purported testimonials of Dr. J. A. Dempsey, wherein Dr. Dempsey is made to say:

Findings

19 F. T. C.

4731 BROADWAY, CHICAGO, ILLINOIS

CHICAGO DENTISTS, *Chicago, Illinois.*

GENTLEMEN: I have carefully examined your method of fitting teeth by mail and want you to know it has my heartiest endorsement. You deserve great credit for the splendid work you are doing and I am sure you are well equipped to render your patrons satisfactory service in every way. No local dentist could possibly compete with your remarkably low prices. Wishing you continued success, I am

J. A. DEMPSEY, D. D. S.

Dr. V. M. Dempsey, admitted by respondent to be the same person referred to in the testimonial as Dr. J. A. Dempsey, testified in substance that he never worked in the respondent's laboratory nor had anything to do with his mail order business; that he did not make the statements appearing in Commission's Exhibit No. 4 either orally or in writing, and that he does not now and did not at the purported date thereof subscribe to the statements therein contained.

In Commission's Exhibits 4 and 25 appear a purported testimonial of Dr. A. Meyers, a Chicago dentist:

Dr. A. Meyers, 1204 Milwaukee Avenue, Chicago, Illinois. Chicago Dentists, Chicago, Illinois. Gentlemen: The plates you are supplying by mail are of fine quality and equal in every respect to plates for which local dentists charge several times the prices you are asking. I am sure your system of fitting teeth will be enthusiastically approved by your patients, as it is entirely correct, both in principle and in practice.

A. MEYERS, D. D. S.

Dr. Franklin G. Myers was called as a witness, and respondent admitted that he was the Meyers purported by him to have signed the above quoted testimonial. The doctor testified in substance as follows: That he is a dentist and was for a time employed by the respondent as such, but had no connection with the laboratory work of respondent; that he did not make or sign the above and foregoing testimonial and did not endorse or authorize the statements therein contained; that he never verbally or otherwise made any such statements.

In Commission's Exhibits 4 and 25 appear a purported testimonial of Dr. Thomas H. Logan, of Chicago, which reads as follows:

DR. THOMAS H. LOGAN, D. D. S.,
7207 BLACKSTONE AVENUE, CHICAGO, ILLINOIS

CHICAGO DENTISTS, *Chicago, Illinois.*

GENTLEMEN: Your system of fitting dental plates by mail is thoroughly scientific and practical. I am sure you are capable of producing artificial teeth for patients everywhere that will give them full power of mastication, restore the natural facial contour, and that may be worn with ease and comfort. You deserve great praise for the tremendous saving you are offering to the public,

and with your broad, liberal guarantee I cannot see why anyone should ever want to pay the exorbitant prices demanded by many local dentists.

Dr. THOMAS H. LOGAN.

As to this purported testimonial, Dr. Logan testified in substance as follows: That he is a licensed, practicing dentist in the State of Illinois, and was in the employ of the respondent for a short time, doing regular dental work and having no connection with his laboratory. He said: "Fitting teeth by mail, that is to say, sending the material to the laity and they taking their own bites and then sending it back to the laboratory for the making of a set of teeth, is not practical and can't be done." He said that he never wrote the statements attributed to him on Commission's Exhibits 5-A and 5-B, quoted above; that he never authorized the statements; that he never verbally or orally made such a statement or similar statement; that he never stated that the system of fitting plates by mail is thoroughly scientific and practical.

He stated that it is not practical or scientific; that it can't be done; that he never stated that he was sure the respondent was capable of producing artificial teeth for patients everywhere that would give them full power of mastication, restore natural facial contour, and that might be worn with ease and comfort. He never stated that the respondent deserved great praise for the tremendous price saving he was offering to the public; he never stated that with the broad, liberal guarantee he could not see why anyone ever wanted to pay exorbitant prices demanded by many local dentists. The first time he ever saw such statement was the day before he testified. He never signed any paper before the respondent. The respondent asked him for his signature and he signed his name. He signed it in pencil and the next day they came back and handed him a fountain pen and he signed it with the fountain pen. There was nothing on the paper when he signed his name; it was a blank paper.

PAR. 5. Respondent's said plates are often made from cheap material and the workmanship thereon is poor and unscientific. Witness William Schroll, of the American Dental Company, testified that in all of respondent's said plates, with the exception of "V-Implant", which was not before him, the workmanship was very poor. Witness J. M. Ehrhardt (*supra*) testified that in all of respondent's said plates the workmanship was rather crude.

The respondent kept what was termed by his employees a "graveyard." In this "graveyard" were kept plates that had been returned as unsatisfactory by respondent's customers. From this "graveyard" teeth would be taken and used in other plates.

The teeth used by respondent were of inferior quality.

Findings

19 F. T. C.

In some instances whole plates were taken from the said "graveyard" and sent to customers. The witness, Albert Heine, once an employee of the respondent, testified in substance as shown on pages 421 and 422 of the record:

If we found an impression that was so bad we couldn't even get a model of it that looked like a model, we had plates that came back from other patients that didn't fit and they were in a drawer there ("graveyard") and we would take them out of there and match two up that looked like they would fit and send them out. We were told to do that.

Who told you?

The foreman. We had great numbers of teeth coming back. They were coming back all the time, great numbers of them, and they would take another impression of the bite and it would be worse than the other.

Q. What would you do then—what would you do when you found an impression that was not complete, what would you do toward supplying that part of the teeth when there was no indication as to the contour of the mouth?

A. As I said before, I would take my scraper and I would scrape my model around there and make it look how I thought how we thought it should—the shape of the mouth—and we would make a plate on that.

Q. Now this "graveyard" contained a lot of discarded plates, did it?

A. That is all it was—plates that were sent back.

Q. Well, did you ever know of an instance or instances of where these plates were taken from the "graveyard" and sent back to the purchaser?

A. Yes. That is what we would do when the bites came in and it wasn't an impression—which came in there that we couldn't make out anything at all. No articulation at all—couldn't even see whether it was an upper or lower. They mashed it in when they took the impression. We would say there was no use fooling around with that thing—it was a waste of time. We would take a set out of the drawer, match them up as nearly as possible, sometimes stick them in hot water, and send them back.

Q. At whose instance—who told you to do that?

A. The foreman.

When there was a shortage of articulators, door hinges were used as a makeshift. These door hinges were used as a substitute for articulators. An articulator is an appliance used to hold the forms in position while the teeth are being set up. Door hinges were once used by dentists as articulators, but such use has long since been discontinued by dentists.

PAR. 6. Several members of the laity who had purchased plates from respondent were called and examined as to whether their plates so purchased were satisfactory. The following testimony was given by certain of them: Charles O. Howard, of Byron, Ill., age 56, occupation farmer, saw respondent's advertisement in the newspaper and responded to it. He received impression material, took his own impression, and from this impression a plate was made which was to cost \$8.50 and to be sent to him by respondent through

the mails. The teeth were guaranteed to give satisfaction or money returned. He sent \$2 in advance and paid the balance C. O. D. when they came. He testified that they were not satisfactory; that there was a little wisdom tooth which came out at the side of the plate, and that they were too short for him by about one-half inch; that this wisdom tooth protruded and that it would have cut his lip and the side of his face if he had worn it, but he could not wear the plate. He kept this plate three or four days and tried to wear it, but when he would bite, the flange in the back would cut right into his jaw.

He then returned the teeth, directing respondent to either send him a better set or return his money. They sent him more impression material and he took another bite. They made another plate and when it came he could not put it into his mouth. He sent it back again and they sent it back to him together with some "stuff" and told him he should fill that in. He sent these back and they sent him another set and he tried them but could not bite with them. If he tried to bite on one side the other side would flop down. He sent these back and they kept returning the set to him and he returning it to them until finally he would not open the package at all. Then he tried to get his money back, and wrote letters demanding the return of his money. They never answered his letters. He wrote about four or five letters.

Prairie Farmer is a journal having a general circulation in the farming communities throughout the United States. It runs a column which it calls the Prairie Farmer Protective Union, in which it advises its readers that if they have business troubles it will render them free service in adjusting the same. Mr. Howard called the attention of the Prairie Farmer to his difficulty in getting his money returned from respondent, and after writing the Prairie Farmer it was no time at all until he got his money.

Dora Pontious, of Loogootee, Ill., a housekeeper, saw respondent's advertisements in a magazine called Home Comfort. She was in need of teeth, and wrote respondent, who sent her some impression material. She took her own impression, as per instructions received from respondent, and sent the impression back. She ordered a set of plates, the price of which was to be \$19. Only one plate came, and she paid \$9.50 C. O. D. for it. Later on another plate came and she paid \$9.50 C. O. D. for that. She tried the plates for about a week and they did not fit. They hurt her gums and she could not keep them in her mouth. They were of no use to her. They pained her. She finally returned them to respondent. Respondent rebuilt them and sent them back to her. She tried these for about a week

Findings

19 F. T. C.

and then sent them back because they did not fit. She wrote and asked for the return of her money but they did not send it at that time. She then wrote the Prairie Farmer Protective Union and through it she got her money.

Mrs. Rufus Sprunger, of Berne, Ind., by occupation a farmer's wife, saw respondent's advertisement as to plates in the newspaper. She was in need of teeth at the time, and wrote respondent. She ordered a set of teeth, and received a guarantee therewith such as Commission's Exhibit 16-A. The testimonials accompanying the guarantee and the guarantee had an effect upon her influencing her to contract with respondent for these plates. After reading the testimonials and the guarantee, she thought she was safe. She was to pay \$10 for the set. She first paid \$2, when she gave the order, and after that she paid \$8 C. O. D. when the teeth arrived. She first received impression material and took her own impression and returned it to respondent. She followed the instructions as to taking impressions accompanying the material. She gave the teeth a trial and they did not fit. She could not close her mouth when the plates were in. She tried the teeth twice and could not close her mouth. She could not chew with them. She returned them to respondent.

She wrote respondent, demanding return of her money. She then received more impression material, but no money. She made other impressions, and returned the same to respondent. About three weeks later she got another set of teeth from respondent. She could not wear these at all. She could not chew with them and they did not fit. She sent them back. She asked for the return of her money. Later on they sent more impression material. That was about three weeks after she made her last demand for her money. She wrote letters demanding her money and received only impression material. She made and returned but two impressions, but they kept sending impression material to her after she had demanded return of her money. After a period of about six months from the time she first ordered the teeth, the money was returned through the aid of the Indiana Farmers Guide, another farm paper, published at Huntington, Ind., which features a Farmers' Protective column.

Mrs. Lizzie Cunningham, of Walworth, Wis., by occupation a farmer's wife, 60 years of age, testified that in November 1932 she saw respondent's advertisement in the Chicago Herald and Examiner and in response to such advertisement she wrote respondent, who sent her impression material. She took an impression of her mouth and returned it to respondent. They sent her teeth to Walworth, Wis., by mail, to be paid for C. O. D. When the teeth arrived she tried them and could not wear them. They did not fit her at all;

they were too large. About the first of December she made a trip to Chicago and called upon respondent at 1445 West Jackson Boulevard, who had a dentist take an impression of the witness's mouth. He agreed to make her a full set of teeth and send them on when she sent word that she had money to pay for them. She sent word that she had the money to pay for them, but she did not receive the teeth for about six months, and when they came they were both uppers. She had ordered uppers and lowers. She is wearing one set of the uppers, which were made from impressions taken by a dentist, as aforesaid, and they are giving good satisfaction. She wrote the Prairie Farmer and tried to get that paper to prevail upon respondent to send her a lower plate. She never received the lower plate, and consequently did not pay the \$10 agreed upon as a price for such lower plate.

The guarantee referred to above is represented by Commission's Exhibit 7, and reads as follows:

OUR GUARANTEE PROTECTS YOU ABSOLUTELY

We unconditionally guarantee all our dental plates to be made of fine quality, selected materials, in a modern, completely equipped dental laboratory by expert dental technicians, under the personal supervision of regularly licensed doctors of dental surgery.

We further guarantee they will give you full power of mastication (chewing), restore your natural facial expression, and enable you to wear them with ease and comfort. If for any reason you do not wish to keep them, you can return them at any time within thirty days and we will refund your money in full.

CHICAGO DENTISTS.

Respondent's said dental plates are in many instances unsatisfactory, and not serviceable and the terms of said guarantee are in some instances not complied with and in others not complied with until outside influences such as those described as exercised by the Prairie Farmer, are brought to bear upon respondent.

PAR. 7. Respondent trades under the trade name of Chicago Dental House, Inc. The abbreviation "Inc.", attached to said trade name, imports that Chicago Dental House, Inc., is a corporation. Respondent is not incorporated.

PAR. 8. The representations in the advertising of respondent described above are false and misleading in that said dental plates are advertised to be of a value far in excess of their true value; in that the said dental plates will not give full power of mastication, nor will they restore the natural facial expression, nor will they enable the purchaser thereof to wear the same with ease and comfort; in that no regular, licensed doctors of dental surgery personally supervise or have anything to do with the making of respondent's said

Order

19 F. T. C.

dental plates; in that it is rarely, if ever, possible to manufacture a satisfactory, well fitting and serviceable set of dental plates from a self-taken impression made by the laity and that the use of such plates so made is dangerous to the health and life of the user thereof; in that respondent's dental plates are not scientifically made, and that his methods of making such plates from impressions taken by the laity are not endorsed by regular, licensed or other dentists, and that such methods have never been endorsed by such dentists; in that in making said plates respondent uses cheap and defective materials; in that respondent does not cheerfully or otherwise refund the money paid for his products in each and every case when said products are returned as unsatisfactory; in that the Chicago Dental House, Inc., is not a corporation; and said representations of respondent have, and have had, the tendency and capacity to mislead and deceive the purchasers of said dental plates into the belief that such representations were, and are, true, and to influence the said purchasers to purchase respondent's said dental plates in such belief, and have, and have had, the tendency to divert trade to respondent from his said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding, having come on to be heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and the briefs of the attorney for the Commission and of the attorney for the respondent, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusions that the respondent had violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and the Commission being fully advised in the premises—

It is now ordered, That the respondent, Benjamin D. Ritholz, his agents, associates, employees, and representatives, in connection with the advertising, offering for sale or sale in interstate commerce, and in the District of Columbia, of dental plates, cease and desist from

Order

representing in any manner, including by or through the use of testimonials or endorsements or guarantees or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, letters or otherwise:

(1) That said dental plates are of a value greater than their actual value;

(2) That respondent can make or does make a properly fitting and satisfactory dental plate from an impression of the mouth taken by a layman for whose use such plate is intended;

(3) That properly fitting and satisfactory dental plates can be made from an impression of the mouth taken by one who is not a dentist;

(4) That respondent has adopted and/or is using in the manufacture of dental plates the same scientific methods used by dentists or that he is using scientific methods in the making of said dental plates;

(5) That his methods of making dental plates from self-taken impressions are scientific;

(6) That the dental plates manufactured and sold by respondent meet the customers' needs;

(7) That through written guarantees or otherwise he will refund the money paid for dental plates which are returned as unsatisfactory, when he does not in all cases do so promptly;

(8) That great care or superior workmanship or fine quality of materials are used in the construction of respondent's dental plates;

(9) That dentists have endorsed or approved respondent's methods of making dental plates from self-taken impressions or that they have endorsed or approved any of his methods in making dental plates;

(10) That the laboratory wherein said dental plates are made is personally or otherwise supervised by licensed or other doctors of dental surgery;

(11) That the said dental plates will give full power of mastication, restore the natural facial expression or enable the purchaser thereof to wear the same with ease and comfort;

(12) That the business of respondent in manufacturing and selling dental plates is conducted by a corporation.

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

Complaint

19 F. T. C.

IN THE MATTER OF
SCHWARTZ & COMPANY, INC.

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

Docket 2167. Complaint, Mar. 17, 1934—Decision, Nov. 20, 1934

Where a corporation engaged in the purchase of solid fiber board, and corrugated fiber board shipping boxes, a substantial proportion of which it purchased from manufacturers outside the State, in competition with others similarly purchasing, and in sale of said boxes to wholesalers, retailers, and others for use as shipping containers, in competition with manufacturers of and dealers in such boxes, a substantial number of whom are located outside said State, and sold and shipped to customers in the State, in the same area therein which it sold its said products, caused said boxes to be marked with the "certificate of box maker", in purported compliance with the rule of the official classification committee for the railroads, requiring the box maker to certify his product as conforming, as specified, to all construction requirements of consolidated freight classification, and imposing a higher rate upon shipments made in containers which do not conform, and bear such certificate by other than the actual maker; with capacity and tendency to mislead and deceive purchasers, a substantial number of whom prefer to purchase direct from the manufacturer rather than from jobber or wholesaler, into believing it to be the manufacturer of the said boxes thus sold by it, and that they conformed to all the requirements and specifications of the rule in question, and would therefore take the lower rates for carriage, and thereby unfairly divert business to it from competitors who make the boxes which they sell, and from those who do not make their boxes or in any way represent themselves as the makers thereof:

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

Mr. PGad B. Morehouse and *Mr. Robt. N. McMillen* for the Commission.

Mr. Yale L. Schekter, of Philadelphia, Pa., for respondent.

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 Schwartz & Company, Inc., a corporation, 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. Respondent, Schwartz & Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having and maintaining its office, plant, and principal place of business at 151 North Third Street in the city of Philadelphia, in the State of Pennsylvania. Respondent has been and is engaged in the purchase in interstate commerce and in the sale of wrapping paper, twine, and corrugated and fiber boxes, and causing said products, when sold, to be transported from its office or plant in the city of Philadelphia in the State of Pennsylvania to the several purchasers thereof located at other points in said State of Pennsylvania. In the course and conduct of its said business, respondent is, and has continuously been in competition with other individuals, partnerships, and corporations engaged in the purchase and sale of the same or competitive products in commerce in or among the several States of the United States. Many makers of such boxes and other jobbers in such boxes are continually offering for sale and selling such boxes in competition with respondent, and such jobbers are continually purchasing said boxes in interstate commerce in competition with respondent. Shippers of merchandise are continually purchasing said boxes in interstate commerce in competition with respondent.

PAR. 2. Arch-Bilt Corrugated Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having and maintaining its office, factory, and principal place of business at 55 Thirty-third Street, Brooklyn, in the State of New York. Said Arch-Bilt Corrugated Products Corporation is, and has been, engaged in the manufacture and sale of certain corrugated boxes, to be used by manufacturers and other shippers of goods and merchandise as shipping boxes in which to pack such goods and merchandise and cause the same to be transported to purchasers thereof. Respondent has been, and is, employing and causing said Arch-Bilt Corporation to manufacture certain of such corrugated boxes for the respondent and to sell and cause the same to be transported to respondent from the factory of said Arch-Bilt Corporation in said city of Brooklyn in the State of New York to respondent at its said plant and place of business in the city of Philadelphia in the State of Pennsylvania. Said Arch-Bilt Corporation has been, and is, complying in all things with the terms of such employment and of the purchase of said boxes.

PAR. 3. In order that manufacturers or other shippers of goods and merchandise may rightfully use said boxes as shipping boxes in which

Complaint

19 F. T. C.

to cause goods and merchandise to be transported in interstate commerce, such boxes must be so constructed as to meet the requirements of certain rules of the Consolidated Classification Committee made up of representatives of the companies operating the railroads situated within the several States of the United States, said rules were adopted by such Consolidated Classification Committee and were by it filed with the Interstate Commerce Commission as a part of the freight tariff of said railroad companies, in compliance with the law which requires all freight tariffs to be filed with the Interstate Commerce Commission and also with the railroad commissions of the several States. Failure to comply with such rules as to corrugated boxes so used as shipping boxes subjects shippers of orders of less than a carload to a penalty of 20 percentum of the scheduled freight rate, and subjects shippers in carload lots to a penalty of 10 percentum of such scheduled freight rates.

One of said rules requires that each box must bear a certificate of box maker, labeled, printed, or stamped in ink, clearly showing that the boxes do so conform, such certificate to be made in form, size, type, and wording as indicated in a form incorporated in such rule. Said form incorporates the name of the maker of said boxes as the maker thereof.

PAR. 4. Respondent, in its contract with said Arch-Bilt Corporation requires and causes said Arch-Bilt Corporation to stamp in ink on each of said boxes a certificate that conforms to said rule last above alleged in all things, except that the name of said Arch-Bilt Corporation as maker of said boxes is omitted, and the name of respondent is substituted therefor as the maker of such boxes. Said false and misleading certificate so stamped upon such boxes is the only certificate appearing thereon, when said Arch-Bilt Corporation causes said boxes to be so transported and delivered to respondent, and when respondent causes said boxes to be transported and delivered to its customers. Respondent and said maker of said boxes combine and conspire in the manner alleged to evade or violate said rules and regulations and to cause said boxes so misbranded to be transported in interstate commerce as above alleged.

PAR. 5. Respondent is not the maker of such boxes, but is merely a jobber or dealer therein. In the course of his said business, respondent is, and has been, in competition with other jobbers or dealers who purchase in interstate commerce and offer for sale and sell boxes made by others, and which bear certificates in the names only of the makers thereof. Respondent is also, and has been, in the course of his said business in competition with makers of boxes, who offer for sale and sell boxes of their own manufacture which bear only truthful certificates carrying only the names of the true maker of each such box.

PAR. 6. Substantial numbers of purchasers and users of such boxes prefer to purchase boxes of the maker thereof—partly because they expect in such purchases to save in the price paid the profit otherwise to be included in prices charged in purchases from mere jobbers or dealers in such boxes; partly because they prefer to deal with the maker who has intimate knowledge of the construction of such boxes and is directly responsible to his customers for defects therein; and partly because they prefer to use only such boxes in the shipment of their goods and merchandise as carry the name of the maker or makers thereof, as required by the rules above referred to, thus avoiding the risk of being subjected to the penalties above referred to.

PAR. 7. The stamping of said false and misleading certificate upon said boxes so carrying respondent's name as the maker thereof, has the tendency and capacity to, and probably will, deceive and mislead substantial numbers of purchasers and users of said boxes into the belief that respondent is the maker thereof, and to induce such substantial numbers of purchasers and users to purchase the boxes so offered for sale and sold by respondent, in such erroneous belief and because thereof. Wherefore, said false and misleading certificates so stamped on said boxes have the tendency and capacity to, and probably will, divert to respondent much trade that, but for said false and misleading certificates, would go to such competitor jobbers or to such true makers of boxes who offer for sale and sell the same in competition with respondent. Respondent's said use of said false and misleading certificate denies to the purchasing public knowledge of respondent's said relation to the manufacture of said boxes, and the knowledge necessary to enable the public to purchase such boxes only of the true maker thereof, and to purchase only such boxes as bear truthful certificates and only such boxes as comply with the requirements and rules above set forth.

PAR. 8. The acts of respondent as hereinabove alleged 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 an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Schwartz & Company, Inc., charg-

ing it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed answer, hearings were had before a duly qualified examiner of the Commission, at which respondent was represented by counsel, evidence was introduced on behalf of the Commission and by respondent in its behalf. Thereafter briefs were filed on behalf of the Commission and of respondent.

Thereafter this proceeding came on for final hearing on the briefs, respondent 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Schwartz & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and place of business in the city of Philadelphia, State of Pennsylvania. It has been, at all times hereinafter mentioned and now is, engaged in the sale, among other things, of solid fiber board boxes and corrugated fiber board boxes. Its sales are made to wholesalers, retailers, and others in various lines of business, primarily not for resale but for use as shipping containers.

PAR. 2. A substantial proportion of the boxes so sold by respondent have been and are purchased by it from manufacturers thereof whose factories are located outside the State of Pennsylvania. At the time of purchase it was and is contemplated by the parties that said boxes should be, and they thereafter have been and are regularly shipped from said factories to respondent's place of business within the State of Pennsylvania. In the purchase of said boxes respondent is in competition with other persons, firms, and corporations located within the State of Pennsylvania purchasing boxes from manufacturers located outside said State, and which boxes, when so purchased, are shipped to the purchasers at their places of business within said State.

PAR. 3. In the course and conduct of its said business of the sale of corrugated and fiber boxes, respondent is in competition with manufacturers of such boxes and with wholesalers of and dealers in the same, a substantial number of whom are located outside the State of Pennsylvania and sell and ship to customers within the State of Pennsylvania in the same area in which respondent sells and offers to sell its said boxes.

PAR. 4. The Official Classification Committee is an organization of the railroads engaged in the carriage of freight among the States in the eastern part of the United States. It is the duty and function of this committee to compile and file with the Interstate Commerce Commission and similar Commissions of the various States, tariffs which are the basis of freight rates to be charged, and charged by said railroads. For a number of years and at the present time, a part of said tariffs has been and is rule 41 of said committee, which governs the rates of charges for goods, wares, and merchandise tendered for shipment and shipped in said fiber board and corrugated fiber board boxes. Section 1 of said rule 41 provides that goods tendered in solid fiber board or corrugated fiber board boxes which do not conform to all the requirements and specifications of said rule 41, shall take a substantially higher rate, to wit: 20 percent if in less than car-lot loads and 10 percent in carload lots, over and above the charge applying to merchandise shipped in such boxes which do conform to the requirements and specifications of said rule. Section 8 of said rule provides, as one of the requirements, that all such fiber boxes must bear a certificate of the box maker, labeled, printed or stamped in ink, clearly showing that the boxes do conform to the requirements and specifications of said rule, and sets out the form such certificates shall take, as follows:

Circular in form; inside the outer rim the name and address of the box maker; within the circle the words "Certificate of box maker. This box conforms to all construction requirements of consolidated freight classification. Resistance (bursting test) pounds per square inch. Dimension limit inches. Gross weight limit pounds."

It is and has been the interpretation and application by the committee of this rule 41 that goods tendered or shipped in boxes bearing said certificate but not in the name of the actual box maker, take and have taken the higher rates.

PAR. 5. Respondent is not the manufacturer or maker of the boxes which it sells but they are purchased by respondent from the makers thereof, as hereinabove alleged. Nevertheless, upon all such boxes respondent causes said certificate in the form and words prescribed by said section 8 of rule 41, to be stamped with its name and address in that part of the form which is to bear the box maker's name and address.

PAR. 6. A substantial number and to a substantial extent purchasers of such boxes prefer to purchase direct from the manufacturer, rather than from jobber or a wholesaler.

PAR. 7. The said practice of respondent has the capacity and tendency to mislead and deceive the purchasers thereof into the belief

Order

19 F. T. C.

that respondent is the manufacturer of the fiber board boxes which it sells, and to deceive and mislead them into the belief that said boxes conform to all the requirements and specifications of rule 41 of the Official Classification Committee and will, therefore, take the lower rates for carriage; and thus unfairly to divert business to respondent from competitors who make the boxes they sell and from competitors who do not make the boxes they sell and do not in any way represent themselves to be the makers thereof.

CONCLUSION

The said acts and practices of respondent, under the circumstances and conditions set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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 evidence and the briefs of counsel for the Commission and for respondent, and the Commission having considered the record and having made its findings as to the facts and its conclusion that respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondent, Schwartz & Company, Inc., its officers, agents, representatives, and employees, in connection with the purchase in interstate commerce, for resale, of corrugated fiber-board and solid fiber-board boxes, forthwith cease and desist from stamping, stenciling, labeling, or printing upon them, and from causing or permitting other persons, for its benefit and in its behalf, to stamp, stencil, label, or print upon them, the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that it is the manufacturer of said boxes.

It is further ordered, That respondent, its officers, agents, representatives, and employees, forthwith cease and desist from stamping, labeling, printing, or stenciling upon boxes not manufactured by it and sold by it in competition with other persons, firms, and corpora-

428

Order

tions selling and shipping into Pennsylvania from without said State solid fiber-board and corrugated fiber-board boxes, the certificate prescribed by rule 41 of the Official Classification Committee, as set out in the findings herein, or in any other manner representing that it is the maker of said boxes.

It is further ordered, That said respondent shall within 30 days from and after 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 complied with this order.

Complaint

19 F. T. C.

IN THE MATTER OF
AMERICAN DRUG CORPORATION

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

Docket 2170. Complaint, Apr. 24, 1934—Order, Nov. 21, 1934

Consent order requiring respondent corporation, in connection with advertisement and sale in interstate commerce of its preparation "Sinasiptec" to desist from representing in advertisements, newspapers, magazines, journals, radio, circular letters, or otherwise, that said preparation will cure, prevent, or relieve sinus trouble, except to the extent that inflammation and swelling may be relieved through the use thereof, as specified, or that said preparation has ever cured or prevented sinus trouble, or is an antiseptic.

Mr. John W. Hildrop for the Commission.

Fordyce, White, Mayne & Williams and *Mr. Wm. F. Fahey*, all of St. Louis, Mo., for respondent.

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 American Drug Corporation, hereinafter referred to as respondent, has been and 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. Said American Drug Corporation, respondent, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Louis, in the State of Missouri. It is, and for more than four years last past has been engaged in the business of manufacturing, selling, and distributing, to dealers, users, and the general consuming public throughout the United States, certain medicinal or therapeutic preparations or products denominated and designated by respondent as "Sinasiptec", "Sinasiptec Inhalant", "Sinasiptec Ointment", "Sinasiptec Liquid", and "Sinasiptec Salve", which preparations or products are indicated, sold and distributed by respondent for use in the treatment of human ailments,

such as nasal and head congestion, hay fever, sinus trouble, inflammation, respiratory diseases, and other ailments.

Such sale and distribution of said products or preparations is made and promoted by respondent through salesmen and agents employed by it for the purpose, also through and by means of trade promotional literature such as advertisements of said products published by respondent in newspapers, magazines, and other periodicals of general circulation among the purchasing public throughout the United States, and pamphlets, circulars, leaflets, letters, and other forms of communications and advertising matter, published and distributed by respondent to purchasers and prospective purchasers throughout the United States. In distributing said products and in executing the purchase orders therefor respondent caused and causes the same, as and when sold, to be shipped, transported and delivered from its place of business in the State of Missouri, through and into other States and Territories of the United States and the District of Columbia, to the respective purchasers thereof in such other States, Territories, and said District. In the sale and distribution of said products in the course of its business, respondent is and at all times herein mentioned has been engaged in commerce as "commerce" is defined in said act.

PAR. 2. At all times herein mentioned there have been and are various and sundry medicinal or therapeutic preparations, appliances, or products manufactured or sold and distributed by persons, partnerships, and other corporations to dealers, users, and the consuming public, in, between, and among the various States and Territories of the United States and the District of Columbia, for the prevention, treatment, alleviation, or cure of human ailments of the type, kind, or character for the treatment, prevention or cure of which respondent indicates, recommends, and sells its said medicinal preparations. Respondent's said products and the said preparations, appliances, or products of such persons, partnerships, and other corporations are and have been competitive products; and the respondent is and at all times herein mentioned has been conducting its said business and selling and distributing its said products in direct, active competition with such persons, partnerships, and other corporations and with actual and potential competitors generally throughout the United States and in various sections thereof.

PAR. 3. In promoting and effecting the sale and distribution of its aforesaid medicinal preparations or products in the course of its business and for the purpose of inducing and causing dealers, users, and consumers to purchase or use said preparations or products, respondent has caused and continues to cause various representations,

statements, and assertions to be made and set forth, in its trade promotional literature and by its salesmen and agents and otherwise, to the purport and effect that each of said medicinal preparations or products of respondent is a specific and an effective and efficacious therapeutic agent, treatment, remedy, and cure for, and will prevent, relieve, and cure sinus headaches, sinus pains, sinus inflammation, sinus infections, and all other sinus troubles, hay fever, catarrh, colds, respiratory inflammation, and diseases and rhinitis in any person using or applying said preparations or products.

In the course and conduct of said business respondent has adopted the word "Sinasiptec" and has named, designated, and described said products and preparations with such word "Sinasiptec", with the purpose, tendency, and effect of thereby representing to the purchasing and consuming public, directly and by implication, that each such preparation or product so named and designated by it is a specific and a therapeutic agent or remedy indicated for, and will prevent, relieve, and cure sinus inflammation, sinus infection, and any sinus trouble or diseased condition of the sinus. Said representations, statements, and assertions made by respondent, and its use of said term "Sinasiptec" are and have been false, misleading, and deceptive in that none of such medicinal preparations or products of respondent is a specific for, or a therapeutic agent or remedy indicated for any of said diseases or ailments, nor will any of said preparations or products cure, prevent, or relieve said ailments or diseases or any of them, nor is any such medicinal preparation or product of respondent an effective, competent, or efficacious treatment, remedy or cure for such ailments or diseases, or any of them. Among such false, misleading and deceptive representations, statements and assertions published and circulated by respondent in its aforesaid trade promotional literature are the following:

DOCTORS WARN AGAINST SINUS INFECTION

Worst colds, catarrh, sore throat, headaches, caused by germs that settle in the sinus passages. Physicians tell how coughs, laGrippe, flu, pneumonia can follow if sinus condition is neglected.

Thousands of people here, who formerly suffered the painful pressure and stuffiness of threatened sinus trouble, now breathe freely since using Sinasiptec, the sensational discovery of a St. Louis doctor.

Within 5 seconds after using a little Sinasiptec in warm water, the head clears, and within a day the stuffed up nasal condition dries up. The faithful use of Sinasiptec in this way has no doubt saved many folks from dangerous surgical operations and hospital bills.

Long continued colds, headaches, excessive nasal discharge, accumulation of phlegm likewise vanish when the nasal passages are bathed daily with Sinasiptec. A large bottle of Sinasiptec costs little and is guaranteed to bring results, or money back. * * *

436

Complaint

YEARS OF UNBEARABLE

SINUS PAIN

CAN NOW BE AVOIDED

Any person afflicted with severe sinus trouble can tell you there is no human pain so terribly unendurable. Even surgical operations bring no relief from the excruciating torture in many cases. *Besides, sinus infection brings other treacherous diseases that tear down bodily health.* Be warned by frequent head colds, catarrh, mouth breathing, snoring, pressure at the bridge of the nose, congested nasal passages, headaches above the eyes, spells of temporary deafness, inflamed and phlegm-coated throat, bad odor from nasal mucous throat discharges.

Sinasiptec is a doctor's discovery for safe protection against threatened sinus trouble. It quickly clears the nose and washes away the fetid matter congested in the passages.

Thousands who formerly *feared* sinus infection, now prevent colds and other respiratory diseases, have a clear head, and breathe freely, since using Sinasiptec in warm water, as a twice-daily nasal bath. It's so easy and pleasant! The Sinasiptec treatment soon becomes a fine health habit, like brushing the teeth!

SINASIPTEC

(Pronounced "Sina-siptek")

Hay Fever?—Sinasiptec prevents—by a New Method

Sinasiptec Ointment acts quickly when used in both acute and more prolonged conditions. Where the nose is congested on one side or the other, and the case is one of longer standing, a fresh cold is apt to aggravate the condition and make the swelling more pronounced. A simple cold will congest the mucous membranes in the nose and cause one side or the other, or even both sides of the nose to become engorged and create that stuffy and clogged feeling in the head. In both such instances mentioned above Sinasiptec Ointment is a highly effective treatment and may be applied to advantage at the very inception of a Head Cold or at any stage during the progress of a cold and as an after treatment.

HAY FEVER

Successfully treated by New Method

Thousands of people who formerly suffered the misery of hay fever, have already found Sinasiptec a genuine blessing. Actual letters on file from enthusiastic and grateful users, show this treatment to be a magnificent success. Right now is the time to start using Sinasiptec. Use in warm water in a nasal douche and bathe nasal passages regularly. It will give your head a gloriously clear feeling. You will breathe with ease. Headaches and sinus "flare-ups" will become a rarity. And above all, you will be building up that nasal strength which staves off the agony of Hay Fever and Rose Cold.

Complaint

19 F. T. C.

WHAT DO YOU KNOW ABOUT

HAY FEVER?

How a St. Louis doctor discovered Sinasiptec and forever solved the problem—millions can now be saved from suffering.

Gradually the preparation got used locally for other conditions—notably catarrh, sinus headaches, and sinus pains. And it came to be known as Sinasiptec.

The funny point is that Sinasiptec became so well known nationally for sinus conditions, that its original use, hay fever, remained largely confined to St. Louis.

Now we are broadcasting the virtues of Sinasiptec as a hay fever remedy, and believe the druggists of America will do a good business on it this summer.

If you have among your customers any hay fever sufferers, tell them about Sinasiptec.

PAR. 4. The use by the respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, have and had the capacity, tendency, and effect of misleading and deceiving the purchasing public into the erroneous belief that said statements, representations, and assertions are true in fact and purport, and of causing members of the purchasing public to buy and use respondent's said preparations or products in such erroneous belief. A capacity, tendency, and effect of the use of such false, misleading, and deceptive representations, statements, and assertions by respondent are (a) to prejudice and injure the public in that said products do not and will not accomplish or bring about the beneficial or curative results claimed therefor in said false, misleading, and deceptive representations hereinabove described; and (b) to prejudice and injure respondent's competitors in their business by tending to create and instill prejudice and distrust in the minds of purchasers and prospective purchasers against competing products indicated and sold for the treatment of the ailments of the type hereinabove mentioned; and further, in that said false, misleading, and deceptive representations of respondent attract custom and trade to respondent's said products, thereby unfairly diverting and tending to unfairly divert trade and custom from competitors' products, and (c) to otherwise prejudice and injure the public and respondent's competitors.

PAR. 5. The said false, misleading, and deceptive acts and practices as used by respondent are methods of competition which are unfair and which are prejudicial and injurious to the public interest and to legitimate trade and commerce in medicinal or therapeutic preparations, agents or appliances for the prevention or treatment of human

ailments, particularly the human ailments hereinabove mentioned; and said false misleading and deceptive acts and practices as used by respondent constitute unfair methods of competition in commerce in violation of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon the respondent's amended answer, waiving all further proceedings and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, pursuant to paragraph 2 of rule III of the Commission's Rules of Practice, and the Commission being fully advised in the premises—

It is now ordered, That in the advertising and sale in interstate commerce of its certain preparation and article of merchandise known, designated, and described as Sinasiptec, the respondent cease and desist from representing by advertisements in newspapers, magazines, journals, radio, circular letters, or otherwise, that its certain preparation, known and designated as Sinasiptec, will cure, prevent, or relieve sinus trouble (except that by the use of said preparation, known and designated as aforesaid, as Sinasiptec, sinus trouble may be relieved to the extent that by its use the upper nasal passages, intersecting with the sinus passages, may be cleaned out, so that the sinus may properly drain and that by the use of said Sinasiptec inflammation and swelling may also be relieved) and/or that said preparation known and designated as Sinasiptec has ever cured or prevented sinus trouble, or that said Sinasiptec is an antiseptic.

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 and conformed to the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
PAUL F. BEICH COMPANY¹

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

Docket 2237. Complaint, Oct. 2, 1934.—Decision, Nov. 21, 1934

Where a corporation engaged in the manufacture and sale of candy, including such "break and take", "picks", or "draws" merchandise as assortments composed of, (1) penny packages, together with a number of larger pieces secured as prizes by chance purchasers of those of said packages, which contained and concealed within their wrappers pieces differing in color from that of the majority, and, (2) a number of small, individually wrapped penny candies of uniform size and shape, together with a number of larger pieces secured as prizes by chance purchasers of one of said individually wrapped pieces, the concealed color of which differed from that of the majority, and in both of which assortments purchaser of last package or piece also received one of the larger pieces,—

(a) Sold said assortments, together with explanatory display cards for the retailer's use, or with advice as to their nature and plan through legends upon the containers thereof, and explanations of its salesmen, to wholesalers, jobbers, and retailers, in competition with concerns who were unwilling to offer and sell candies packed as above set forth or otherwise, so as to involve a game of chance contrary to the public policy of the States, the District of Columbia and the United States Government, and in violation of local criminal statutes of many States, and in competition with candy sold at retail without any such features connected therewith, and thereby placed in the hands of others the means of conducting lotteries in the sale of its products, as above set forth, as a means of inducing purchasers to buy its products in preference to those of its competitors'; and

(b) Violated the code of fair competition for the candy manufacturing industry, in so selling such "break and take", "picks", or "draws";

With the tendency and capacity unfairly to divert trade and custom from such competitors to it, and to exclude from the trade all those who are unwilling to and do not use such methods, and all actual and potential competitors who do not use such methods or their equivalent for the reasons above set forth, or as detrimental to public morals or those of the purchasers, and to lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as use the same or equivalent methods, and with the result that gambling, especially among children, was taught and encouraged, the industry was injured through the merchandising of a chance or lottery instead of candy, retailers were provided with the means of violating the laws of the several States, competitors were put to a disadvantage and trade was diverted from them to it by reason of the preference of many dealers and ultimate purchasers for candy sold as aforesaid, sale of candy sold without the lottery or gambling feature was adversely affected by the competition of the other,

¹ On December 30, 1935, order in this case was rescinded, and amended complaint issued.

442

Complaint

and freedom of fair and legitimate competition in said industry was restrained and impeded by such immoral method of sale and distribution:

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

Mr. Henry C. Lank, for the Commission.

Mr. Walter C. Hughes, of Chicago, Ill., for respondent.

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 Paul F. Beich Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and in the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery 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:

Count I

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Bloomington, State of Illinois, and with a branch selling office and branch manufacturing establishment in the city of Chicago, State of Illinois. Respondent for several years last past has been engaged in the manufacture of candy and in the distribution thereof to wholesale dealers and jobbers and retail dealers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Bloomington, Ill., and from its branch establishment in the city of Chicago, Ill., into and through other States of the United States and the District of Columbia to said purchasers at their respective points of location in said several States and in the District of Columbia. In the course and conduct of the said business respondent is in competition with other corporations, partnerships, and individuals engaged in the manufacture of candy and in the like sale and distribution thereof in said commerce between and among the various States of the United States and the District of Columbia and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers

and jobbers and to retail dealers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of the said assortments of candies is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to said purchasers of said pieces of candy of uniform size and shape, in the following manner:

The said pieces of candy of uniform size and shape in said assortment are contained within wrappers, two pieces of said candy being contained within each wrapper. The majority of said pieces of candy are of the same color, but a small number of said pieces of candy are of a different color, the colors of said pieces of candy being effectively concealed from the prospective purchaser by the wrappers in which they are contained until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of two for 1 cent, but the purchaser who procures two pieces of said candy of a different color than the majority 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 candy in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a different color than the majority, is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(b) Another assortment of candy consists of a number of small pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The said pieces of candy of uniform size and shape are contained within wrappers and the majority of said pieces of candy are of the same color, but a small number of the said pieces of candy are of a different color but the color of the said pieces of candy is effectively concealed from the prospective purchaser by the wrappers in which they are contained, until a selection or purchase has been made and the wrapper removed. 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 the said candies of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and the purchaser of the

last piece of candy in the said assortment is also entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a color different from the majority of said pieces of candy is thus to procure one of the said larger pieces of candy wholly by lot or chance.

Respondent in most instances furnishes the said wholesale dealers and jobbers and retail dealers a display card with said assortments of candy, to be used by retail dealers in offering said candies for sale, which display card bears a legend or legends informing the purchaser that said candy is being sold in accordance with the sales plan above mentioned. In cases where the display card is not furnished, the box within which the assortment is packed contains or bears a description of the contents thereof and respondent's salesmen advise the wholesale dealers and jobbers and retail dealers as to the manner in which the said assortment may be disposed of in order to carry out the sales plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers resell said assortments of candy to retail dealers and said retail dealers and the retail dealers to whom respondent sells direct, 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 respondent's sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance, or the sale of a chance to procure such larger pieces of candy in the manner alleged. Such game of chance, and the sale along with the sale of such candy of such chance to procure such larger pieces of candy in the manner alleged, are contrary to the established public policy of the several States of the United States and the District of Columbia, and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

By reason of said facts many persons, firms, associations, and corporations who make and sell candies in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed or assorted as above alleged, or otherwise arranged and packed, for sale to the purchasing public so as to involve a game of chance or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

Complaint

19 F. T. C.

PAR. 5. Many dealers in, and ultimate purchasers of, candies are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by said competitors of the respondent who did not use the same or an equivalent method. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method that is contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned method, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said method, acts and practices 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.

Count II

PARAGRAPH 1. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things

set out in paragraph 1 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 1 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 1 of said count 1 were repeated verbatim.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count 1 were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count 1 were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count 1 were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count 1 were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count 1 of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count 1 of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count 1 were repeated verbatim.

PAR. 7. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June, 1933, by his executive order in writing appointed Hugh S. Johnson to be the administrator for Industrial Recovery under Title I of said act.

Under and pursuant to the provisions of said National Industrial Recovery Act, National Confectioners' Association of the United States, Inc., a corporation, as a representative of the Candy Manufacturing Industry, submitted to the President of the United States an application for the approval of a code of fair competition for the candy manufacturing industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had that on the 9th day of June, 1934, said Johnson, as such administrator, submitted a certain code of fair competition for the candy manufacturing industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, and that the requirements of classes (1) and (2) of subsection (a) of Section 3 of said Act had been met. The concluding paragraphs of said report are in the following words, to wit:

I find that:

(a) Said code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the

442

Complaint

consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The code as approved complies in all respects with the pertinent provisions of said title of said act, including without limitation subsection (a) of section 3, subsection (a) of section 7, and subsection (b) of section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(c) The code is not designed to and will not permit monopolies or monopolistic practices.

(d) The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(e) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said code.

It is recommended, therefore, that this code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

JUNE 9, 1934.

Thereafter, and on the 11th day of June, 1934, the President of the United States made and issued his certain written executive order wherein and whereby he adopted and approved the report, recommendations, and findings of said administrator, and ordered that the said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the candy manufacturing industry, and became and still are binding upon every member thereof, except that said code of fair competition when so approved was approved with a proviso that rule 19, article VIII thereof was stayed for a period of 10 days. Successive subsequent administrative orders were severally duly made and entered by which the provisions of said rule 19, article VIII, were stayed for fixed periods designated in said several orders, the latest date to which said rule 19 was stayed being July 30, 1934. On July 30, 1934, said rule 19, article VIII, became in full force and effect. On and since said July 30, 1934, the said code of fair competition, including said rule 19, article VIII, has been and is in full force and effect and became, and still is, binding upon every member of said industry.

Rule 19, article VIII, of said code provides as follows:

No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take", "picks", or "draws", or merchandise of a like character, serving the same purpose.

Among persons engaged in said trade and among the purchasing public the language of said rule 19 is understood to refer to and

include candies offered for sale and sold by the method used by respondent as above alleged. The language of said rule 19 does refer to and include candies so offered for sale and sold. Candies offered for sale and sold by the method so used by respondent are of the type of merchandise commonly referred to as "break and take", "picks", or "draws", and are merchandise of a like character, serving the same purpose, within the intent and meaning of said rule 19, article VIII.

Notwithstanding said provisions of said rule 19, article VIII, of said code of fair competition, respondent has contained to, and does, use said method of competition hereinabove alleged and described, and has been and is offering for sale and selling to wholesale dealers, jobbers, and retail dealers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, as hereinabove alleged and set forth.

PAR. 8. The above alleged method, acts, and practices of the respondent in violation of the standard of fair competition for the candy manufacturing industry of the United States constitute unfair methods of competition in commerce within the 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 respondent, Paul F. Beich Company, charging it 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 on the respondent on October 4, 1934, with notice of hearing on November 9, 1934, on the charges set forth in the complaint, together with a copy of the Rules of Practice adopted by the Commission with respect to the time within which answer is required to be made by a respondent after service of a complaint and with respect to failure of respondent to appear or to file answer thereto.

The time of the respondent to file answer to the complaint in accordance with the said Rules of Practice expired on October 24, 1934, and the respondent having failed to file answer to said complaint and

the respondent having further failed to appear at the time and place set for the hearing and no extension of time to answer and to appear having been requested or granted, and the respondent being in default for want of answer and appearance in accordance with the Rules of Practice of the Commission, and the Commission having duly considered the records 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, Paul F. Beich Company, is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Bloomington, State of Illinois, and with a branch selling office and branch manufacturing establishment in the city of Chicago, State of Illinois. Respondent for several years last past has been engaged in the manufacture of candy and in the distribution thereof to wholesale dealers and jobbers and retail dealers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Bloomington, Ill., and from its branch establishment in the city of Chicago, Ill., into and through other States of the United States and the District of Columbia to said purchasers at their respective points of location in said several States and in the District of Columbia. In the course and conduct of the said business respondent is in competition with other corporations, partnerships, and individuals, engaged in the manufacture of candy and in the like sale and distribution thereof in said commerce between and among the various States of the United States and the District of Columbia and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers and to retail dealers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of the said assortments of candies is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to said purchasers of said pieces of candy of uniform size and shape, in the following manner:

The said pieces of candy of uniform size and shape in said assortment are contained within wrappers, two pieces of said candy being

Findings

19 F. T. C.

contained within each wrapper. The majority of said pieces of candy are of the same color, but a small number of said pieces of candy are of a different color, the colors of said pieces of candy being effectively concealed from the prospective purchaser by the wrappers in which they are contained until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of two for 1 cent, but the purchaser who procures two pieces of said candy of a different color than the majority 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 candy in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a different color than the majority, is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(b) Another assortment of candy consists of a number of small pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The said pieces of candy of uniform size and shape are contained within wrappers and the majority of said pieces of candy are of the same color, but a small number of the said pieces of candy are of a different color, but the color of the said pieces of candy is effectively concealed from the prospective purchaser by the wrappers in which they are contained, until a selection or purchase has been made and the wrapper removed. 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 the said candies of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and the purchaser of the last piece of candy in the said assortment is also entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a color different from the majority of said pieces of candy is thus to procure one of the said larger pieces of candy wholly by lot or chance.

Respondent in most instances furnishes the said wholesale dealers and jobbers and retail dealers a display card with said assortments of candy, to be used by retail dealers in offering said candies for sale, which display card bears a legend or legends informing the purchaser that said candy is being sold in accordance with the sales

plan above mentioned. In cases where the display card is not furnished, the box within which the assortment is packed contains or bears a description of the contents thereof and respondent's salesmen advise the wholesale dealers and jobbers and retail dealers as to the manner in which the said assortment may be disposed of in order to carry out the sales plan above mentioned.

PAR. 3. Aforesaid wholesale dealers and jobbers resell said assortments of candy to retail dealers and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale 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 respondent's sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance, or the sale of a chance to procure such larger pieces of candy in the manner alleged. Such game of chance, and the sale along with the sale of such candy of such chance to procure such larger pieces of candy in the manner alleged, are contrary to the established public policy of the several States of the United States and the District of Columbia, and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

By reason of said facts many persons, firms, associations and corporations who make and sell candies in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed or assorted as above alleged, or otherwise arranged and packed, for sale to the purchasing public so as to involve a game of chance or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candies are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by said competitors of the respondent who did not use the same or an equivalent method. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

Findings

19 F. T. C.

PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method that is contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such a method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. 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. 8. 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. Many competitors of respondent do not sell candy so packed and assembled that it can be resold to the public by lot or chance, and 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 re-

spondent 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. 9. 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.

PAR. 10. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June, 1933, by his executive order in writing appointed Hugh S. Johnson to be the administrator for Industrial Recovery under title I of said act.

Under and pursuant to the provisions of said National Industrial Recovery Act, National Confectioners' Association of the United States, Inc., a corporation, as a representative of the candy manufacturing industry, submitted to the President of the United States an application for the approval of a code of fair competition for the candy manufacturing industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had that on the 9th day of June, 1934, said Johnson, as such administrator, submitted a certain code of fair competition for the candy manufacturing industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of title I of the National Industrial Recovery Act, and that the requirements of classes (1) and (2) of subsection (a) of section 3 of the said act had been met. The concluding paragraphs of said report are in the following words, to wit:

I find that:

(a) Said code is well designed to promote the policies and purposes of title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption

Findings

19 F. T. C.

of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The code as approved complies in all respects with the pertinent provisions of said title of said act, including without limitation subsection (a) of section 2, subsection (a) of section 7, and subsection (b) of section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(c) The code is not designed to and will not permit monopolies or monopolistic practices.

(d) The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(e) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said code.

It is recommended, therefore, that this code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

JUNE 9, 1934.

Thereafter, and on the 11th day of June 1934 the President of the United States made and issued his certain written executive order wherein and whereby he adopted and approved the report, recommendations, and findings of said administrator, and ordered that the said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the candy manufacturing industry, and became and still are binding upon every member thereof, except that said code of fair competition when so approved was approved with a proviso that rule 19, article VIII thereof was stayed for a period of 10 days. Successive subsequent administrative orders were severally duly made and entered by which the provisions of said rule 19, article VIII, were stayed for fixed periods designated in said several orders, the latest date to which said rule 19 was stayed being July 30, 1934. On July 30, 1934, said rule 19, article VIII, became in full force and effect. On and since said July 30, 1934, the said code of fair competition, including said rule 19, article VIII, has been and is in full force and effect and became, and still is, binding upon every member of said industry.

Rule 19, article VIII, of said code provides as follows:

No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take", "picks", or "draws", or merchandise of a like character, serving the same purpose.

Among persons engaged in said trade and among the purchasing public the language of said rule 19 is understood to refer to and include candies offered for sale and sold by the method used by respondent as above set forth. The language of said rule 19 does refer to and include candies so offered for sale and sold. Candies offered for sale and sold by the method so used by respondent are of the type of merchandise commonly referred to as "break and take", "picks", or "draws", and are merchandise of a like character, serving the same purpose, within the intent and meaning of said rule 19, article VIII.

Notwithstanding said provisions of said rule 19, article VIII, of said code of fair competition, respondent has continued to, and does, use said method of competition hereinabove described, and has been and is offering for sale and selling to wholesale dealers, jobbers, and retail dealers certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, as hereinabove set forth and described.

CONCLUSION

The aforesaid acts and practices of respondent, Paul F. Beich Company, 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, Paul F. Beich Company, 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

Order

19 F. T. C.

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 an assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape but 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 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 of a particular color that a larger piece of candy will be given free to said purchaser.

It is further ordered, That the respondent Paul F. Beich Company, 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
THINSHELL CANDIES, INCORPORATEDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 1852. Complaint, June 26, 1930—Decision, Nov. 26, 1934*

Where a corporation engaged in manufacture and sale of candy, including a 17-jar assortment, with which it furnished 200-hole punch boards for use in merchandising said assortments under a plan by which the purchaser of a punch, at 5 cents each, who punched one of twelve preannounced numbers, secured one of the twelve 50-cent jars, included, purchaser of last punch in each of the four sections into which the board was divided, received one of the four 75-cent jars, and purchaser of the last punch on the board received the \$2 jar, and other purchasers nothing;

Sold said assortments to wholesalers and jobbers, and furnished therewith said punch boards, upon which was set forth aforesaid plan (and also a sticker stating "This sales board is free. It is not necessary to use the board"), to increase sale of its candy and assist the retailer in so doing, and with knowledge that such candy, so assembled and packed that the assortments and boards were displayed and used by the retailers for sale and distribution to purchasing public, as suggested, would be resold to the public by chance or lot in many cases; and in so selling competed with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and as providing retailers, who sell candy by such methods, with the means of violating the laws of the several States, and therefore refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance, and to furnish punch boards for use in the sale and distribution thereof;

With the result that some of its competitors, who can compete on even terms only through following such practices to meet the demand for candy thus sold, principally from small retailers, many of whose stores are near schools, and in response to the preference of the largest class of purchasers and consumers of such candy, i. e., the children, were put to a disadvantage by reason of their refusal so to do and others felt constrained to adopt the same, trade was diverted from the former to the latter, gambling among children was taught and encouraged, freedom of fair and legitimate competition in the industry concerned was restrained, and sales of goods sold without any gambling or lottery features connected therewith were decreased by the competition, principally, of said feature in the other, use of which in sale and distribution of candy by lot or chance is against the public policy of many of the States, and some of which make lotteries and gambling devices penal offenses:

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

Mr. Henry C. Lank for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondent.

Complaint

19 F. T. C.

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 Thinshell Candies, Incorporated, 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 Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. Respondent is engaged in the manufacture of candies and in the sale and distribution of candy specialties and punch-board devices for use in the sale of its candy products. It sells its product 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 Chicago, State of Illinois, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the 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 a certain package or assortment of candies consisting of seventeen jars of candy, one of said jars of candy of a size which ordinarily retails at \$2 each, four of said jars of candy being of a size which ordinarily retails at a price of 75 cents each, and twelve of said jars of candy being of a size which ordinarily retails at 50 cents each, and furnishes with said package or assortment a punch board containing 200 holes and 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. Thinshell Easy Pickings. Nos. 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, and 120 receive a 50-cent jar. Last punch in each section receives a 75-cent jar. Last sale on the board receives a \$2 jar." 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 jars 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 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 jars of candy 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.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute an unfair method 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, 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, Thinshell Candies, Incorporated, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer to the complaint, the case was set down for the taking of testimony before an examiner of the Commission and evidence was offered by counsel for the Commission and by counsel for the respondent.

Thereupon, this proceeding came on for final hearing on the briefs and oral arguments of counsel for the Commission and for the respondent and the Commission, now having considered the matter 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

PAR. 1. Respondent, Thinshell Candies, Incorporated, is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and for more than five years last past, has been engaged in the manufacture of candy in Chicago, Ill., and in the sale and distribution of said candy to wholesale dealers and jobbers in the State of Illinois 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 Illinois to purchasers thereof in Illinois and in the States of the United States other than the State of Illinois. 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. Among the candies manufactured and sold by respondent is an assortment of candies consisting of seventeen jars of candy, one of said jars of candy of a size which ordinarily retails at \$2 each; four of said jars of candy of a size which ordinarily retails at a price of 75 cents each, and twelve of said jars of candy of a size which ordinarily retails at 50 cents each. Respondent furnishes with said assortment a punch board containing 200 holes and 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. Thinshell Easy Pickings. Nos. 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, and 120 receive a 50-cent jar. Last punch in each section receives a 75-cent jar. Last sale on the board receives a \$2 jar." 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 jars of candy contained in said assortment are thus distributed to the purchasers of punches from the board wholly by lot or chance.

PAR. 3. Numerous retail dealers purchase the assortment described in paragraph 2 above from wholesale dealers or jobbers who have purchased said assortment from respondent and such retail dealers display said assortment for sale to the public under the sales plan described by the respondent and with the punch board furnished by the respondent and the jars of candy in said assortment are sold and distributed to the consuming public by means of said punch board and in the manner suggested by the respondent.

PAR. 4. All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber or to the retail dealer. The assortments are assembled and packed with the said punch board and can be, and in many cases are, displayed by the retail dealer for sale and distribution to the purchasing public as suggested by the respondent.

On the back of the punch board is a sticker bearing the following language: "This sales board is free. It is not necessary to use the board with the sale of Thinshell Candy." The punch board, however, is furnished by respondent for the purpose of increasing its sales of candy and to assist the retail dealers in increasing the sale of its candy. In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, respondent has knowledge that said candy will be resold in many cases to the purchasing public by retail dealers by lot or chance and it furnishes said punchboard so that its candy may and shall be resold to the purchasing public by said retail dealers by lot or chance and as suggested on said punch board.

PAR. 5. The sale and distribution of candy by retail dealers by the method described in paragraph 2 hereof is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified and the Commission finds as a fact that 1-cent and 5-cent candy sales are in competition with each other and that many competitors and candy dealers regard the sale and distribution of candy by punch boards as morally bad and encouraging gambling, especially among children; as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance and refuse to furnish punch boards for use in the sale and distribution of their candy.

Findings

19 F. T. C.

These competitors are therefore put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the lot or chance method buy respondent's products and the products of others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do and their sales of candy without any lot or chance feature connected therewith show a continued decrease.

In order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 6. The principal demand in the trade for the candy with a lot of chance feature in connection therewith comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with these packages, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the candy without such a feature when the two types of packages are displayed side by side.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of such packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

PAR. 7. There are in the United States many manufacturers of candy who do not furnish with their assortments of candy any punch boards and who sell their candy without any lot or chance feature in connection therewith in interstate commerce in competition with the candy having a lot or chance feature and manufacturers of such candy without a lottery feature in connection therewith have

noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets, and this decrease is principally due to the gambling or lottery feature connected with the last-mentioned type of assortment.

PAR. 8. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States and some of the said States have laws making lotteries and gambling devices penal offenses.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken and the briefs filed herein and the oral arguments of counsel, 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, Thinshell Candies, Incorporated, 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 to be made or may be made 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, assortments of candy together with a device commonly referred to as a punch board for use or which may be used in distributing or selling said candy to the public at retail.

(3) Furnishing to wholesale dealers, jobbers, or retail dealers devices commonly referred to as punch boards either with packages

Order

19 F. T. C.

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.

(4) Furnishing to wholesale dealers, jobbers, and retail dealers devices commonly referred to as punch boards, having printed thereon legends informing the purchasers and purchasing public that certain jars of candy will be obtained by the purchaser purchasing a punch from said punch board and precuring thereby one of several specified numbers.

It is further ordered, That the respondent, Thinshell Candies, Incorporated, 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

MILTON E. MOSS AND E. MOSS, COPARTNERS, TRADING
UNDER THE NAMES AND STYLE OF M. E. MOSS MANU-
FACTURING CO., AND E. MOSS CO.

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

Docket 2228. Complaint, Aug. 31, 1934—Order, Nov. 26, 1934

Consent order requiring respondents, in connection with the sale and offer in interstate commerce of ladies' hosiery, to cease and desist forthwith from falsely representing in their advertisements, circulars, and catalogs distributed generally through the mails, or in any other way, that—

- (a) Said hosiery so dealt in by them is not sold in stores;
- (b) They are the originators of "Run Stop" hosiery, or of "Run Stop Insured Full-Fashioned Silk Hosiery", or created this "New Type" hosiery, or they are sole distributors of such "Run Proof" hosiery;
- (c) Such hosiery is of real high quality and offered and sold at "one third regular price" or at "greatly reduced prices", or is of "a combination weight made only in silk hosiery which retails at \$1.75 per pair";
- (d) They make a free gift of a "Pearl necklace—\$6 genuine Parisian—diamond clasp—clear white, genuine, indestructible", with every three pairs purchased, until they do in fact furnish, without any additional cost, a genuine pearl necklace, costing \$6 at reputable retail stores, and conforming in all respects to the aforesaid description; and
- (e) They guarantee their hosiery against runs from actual wear, and will replace, free of charge, any pair bought from them which runs from actual wear; and

Ordered further, That said respondents, their agents, etc., in connection with the sale of ladies' hosiery in interstate commerce and the offer thereof, also forthwith cease and desist from refusing and neglecting to abide by and adhere to any guarantee made by them in their advertisements, circulars, and catalogs, or otherwise, and from refusing or neglecting, more particularly, to abide by any guarantee to furnish to purchasers, free of charge, a pair of hosiery, for any pair purchased from them, in which runs from actual wear occur.

Mr. James M. Brinson for the Commission.

Mr. Harold Zinman, of Hartford, Conn., for respondents.

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 Milton E. Moss and E. Moss, doing business under the trade names and style of M. E. Moss Manufacturing Company and E. Moss Company,

hereinafter called respondents, have been and are 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:

PAR. 1. Respondents, Milton E. Moss and E. Moss, are copartners, trading under the names of M. E. Moss Manufacturing Company, and E. Moss Company, with their principal place of business located in the city of Hartford, in the State of Connecticut. They are now, and for more than two years last past have been, engaged in the sale and distribution, by mail orders, in commerce between and among the various States of the United States, of a variety of articles, including ladies' hosiery, and have caused, and still cause, said articles when sold by them to be shipped from their place of business in the city of Hartford aforesaid to the purchasers thereof located in the State of Connecticut and States other than the State of Connecticut, and there is now and has been at all times hereinafter mentioned, a constant current of trade and commerce by said respondent in such articles between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said business, the respondents are now, and have been at all times herein mentioned, in substantial competition with other partnerships, and with individuals, firms, and corporations likewise engaged in interstate commerce in the sale and distribution of ladies' hosiery and of other articles similar to those in which the respondents have dealt and still deal.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, the respondents, in soliciting the sale of the hosiery dealt in by them, have falsely represented and still falsely represent in their advertisements, circulars, and catalogs distributed by them generally through the mails, among other things, as follows:

(1) That the ladies' hosiery sold and offered for sale by them is not sold in stores;

(2) That they are originators of "Run-Stop" hosiery; that they created this "new type" hosiery; that they are sole distributor of the world famous "Run-Proof" hosiery; that they are makers of the famous "Neva-Run" hosiery; that they are originators of the famous "Run-Stop Insured Full-Fashioned Silk Hosiery";

(3) That their hosiery is real high quality and is sold and offered for sale by them at "One third regular price"; at "Greatly reduced prices"; "A combination weight made only in silk hosiery which retails at \$1.75 per pair";

Complaint

(4) That with every three pairs of hosiery purchased they will make a free gift of a "Pearl Necklace—\$6 genuine Parisian—Diamond Clasp—Clear White. Genuine Indestructible";

(5) That they guarantee the hosiery they sell against runs from actual wear and that they will replace, free of charge, any pair of hosiery bought from them which runs from actual wear.

PAR. 3. In truth and in fact respondents buy their hosiery from manufacturers and wholesalers therein. Such hosiery is regular stock merchandise which the manufacturers and wholesalers therein sell also to retail stores which in turn resell to the public. And in truth and in fact respondents are not the originators of "Run-Stop" hosiery; did not create this type of hosiery; are not the sole distributor of "Run-Proof" hosiery, makers of "Neva-Run" hosiery, or originators of "Run-Stop" silk hosiery. And in truth and in fact the prices at which respondents offer to sell, and sell such hosiery, is above the regular price charged in retail stores for such hosiery; is no reduction from the regular prices of such hosiery, and such hosiery does not retail at \$1.75 a pair when sold by retailers thereof but is sold at the average store at prices less than the prices at which respondents advertise and sell, and at which they do sell such hosiery. And in truth and in fact the aforesaid "free gift" of a pearl necklace with every three pairs of hosiery purchased from the respondents is not a free gift but the cost thereof is included in the price at which respondents offer to sell, and do sell, such hosiery; and in truth and in fact the pearl necklace so offered as a free gift is made of imitation pearls with a rhinestone clasp instead of a diamond clasp, is not worth \$6 but ordinarily retails at reputable jewelry stores for from 50 cents to \$1. And in truth and in fact, while the respondents guarantee the hosiery for sale against runs from actual wear, it is now, and has been, their general practice and policy not to abide by and not to adhere to the terms of such guarantee but to refuse to perform their obligation under such guarantee.

PAR. 4. The aforesaid misrepresentations of the respondents as set out in paragraph 2 hereof, and their use of the words "Manufacturing Company" as a part of their trade name, have the capacity and tendency to mislead and deceive, and have misled and deceived the purchasers and prospective purchasers, into the beliefs that the representations made by the respondents as set out in paragraph 2 hereof, are true and to purchase hosiery from respondents in such beliefs; thereby trade has been diverted to respondents from competitors engaged in interstate commerce in the sale of hosiery, and as a conse-

Order

19 F. T. C.

quence thereof, substantial injury has been done by the respondents to substantial competition in interstate commerce.

PAR. 5. The above acts and things done by respondents are all to the injury and prejudice of the public and competitors of respondents in interstate commerce, within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondents herein, Milton E. Moss and E. Moss copartners, trading under the names and style of M. E. Moss Manufacturing Company and E. Moss Company, in and by their answer to the complaint in this proceeding having waived hearing on the charges set forth in the said complaint and having stated in their said answer that they desire not to contest the proceeding and having consented in and by their said answer that, as provided in paragraph 2 of Rule III of the Commission's Rules of Practice, the Commission without trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondents and each of them an order to cease and desist from the methods of competition charged in the said complaint; and the Commission having duly considered the said answer and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the respondents, Milton E. Moss and E. Moss, as individuals and as copartners trading under the names of M. E. Moss Manufacturing Company and of E. Moss Company, or under any other trade name, their and each of their agents, servants, and employees, in connection with the sale in interstate commerce by them or by either of them, and in connection with the offering for sale in interstate commerce by them, or either of them, of ladies' hosiery, forthwith cease and desist from representing in their advertisements, circulars, and catalogs distributed by them or either of them generally through the mails, or in any other way:

(1) That the ladies' hosiery sold and offered for sale by them, or by either of them, is not sold in stores, until and unless ladies' hosiery of the same type and kind, and manufactured by the same manufacturers as manufacture such hosiery for the said respondents, is not sold in stores;

(2) That they are the originators, or that either of them is the originator of "Run-Stop" hosiery; that they, or either of them, created this "New Type" hosiery; that they are the originators of,

or that either of them is the originator of, "Run-Stop Insured Full-Fashioned Silk Hosiery"; that they are the sole distributors, or that either of them is the sole distributor of "Run-Proof" hosiery, until and unless such "Run-Proof" hosiery is not distributed by anyone other than said respondents or by either of them;

(3) That the hosiery sold or offered for sale by them, or by either of them, is of a real high quality and is sold and offered for sale by them, or by either of them, at "One third regular price"; at "Greatly reduced prices"; until and unless such hosiery is of real high quality and is offered for sale by the respondents, or by either of them, at one half of the price at which it is regularly sold or at prices greatly reduced from those at which such hosiery is regularly sold by the respondents or by either of them;

(4) That the hosiery sold by them, or by either of them, is of "A combination weight made only in silk hosiery which retails at \$1.75 per pair", until and unless such hosiery is of a combination weight made only in silk hosiery which usually retails at stores dealing in hosiery at \$1.75 per pair;

(5) That with every three pairs of hosiery purchased, they, or either of them, will make a free gift of a "Pearl Necklace—\$6 genuine Parisian—Diamond Clasp—Clear White, Genuine Indestructible", until and unless with every three pairs of hosiery purchased, the respondents, or either of them, do furnish free and without any additional cost, a genuine Parisian pearl necklace costing \$6 at retail at reputable retail stores, which said genuine Parisian pearl necklace shall have a diamond clasp and which said genuine Parisian pearl necklace shall be clear white and shall be indestructible;

(6) That they, or either of them, guarantee the hosiery which they sell and offer for sale, against runs from actual wear and that they will replace, free of charge, any pair of hosiery bought from them which runs from actual wear, until and unless they, or either of them, adhere to and abide by the terms of such guarantees:

And it is hereby further ordered, That the respondents, Milton E. Moss and E. Moss, as individuals and as copartners, trading under the names of M. E. Moss Manufacturing Company and E. Moss Company, or under any other trade name, their and each of their agents, servants, and employees, in connection with the sale of ladies' hosiery in interstate commerce by them or either of them, and in connection with the offering for sale of ladies' hosiery in interstate commerce by them or either of them, forthwith cease and desist from refusing or neglecting to abide by and adhere to any guarantee made by them or by either of them in their or either of their ad-

Order

19 F. T. C.

vertisements, circulars and catalogs, distributed by them or either of them generally through the mails, or in any other way, and more particularly, from refusing or neglecting to abide by any guarantee made by them or by either of them by which they, or either of them agree or have agreed to furnish to their purchasers and prospective purchasers a pair of hosiery free of charge for any pair of hosiery bought from the said respondents or from either of them, in which hosiery, purchased from the said respondents or either of them, have occurred or occur runs from actual wear.

And, it is hereby further ordered, That the said respondents, and each of them, shall, within 30 days from the day of the date of the service upon them of this order, file with this Commission a report or reports in writing, setting forth the manner in which they, and each of them, shall have complied with this order.

Complaint

IN THE MATTER OF
THE GEOGRAPHICAL PUBLISHING COMPANY

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

Docket 2239. Complaint, Oct. 18, 1934—Order, Nov. 26, 1934

Consent order requiring respondent, its agents, etc., in connection with the sale and offer in interstate commerce of atlases, books, magazines, journals, and other publications, to cease and desist from advertising, publishing, or representing in any manner that—

- (a) Its salesmen or solicitors are from or with "The National Geographic Society" or represent said society, or that certain of the subscriptions sold and offered by it include the National Geographic Magazine, or that its salesmen or solicitors ever were agents for the National Geographic Society and authorized to take subscriptions for said magazine, or ever were photographers in the employ of said society or that they represent "The Geographic"; or
- (b) The National Geographic Society is or was a subsidiary of it, or that an atlas sold and in some cases given as a premium by its salesmen or solicitors is or ever was sponsored or published by said society or prepared thereby, although published by it.

Mr. John W. Hilldrop 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 The Geographical Publishing Company, a corporation, 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. That said respondent, The Geographical Publishing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago, in said State.

PAR. 2. That said respondent is now and for a number of years last past has been engaged in printing and publishing maps, atlases, and books, and in the sale of said products has caused the same to be distributed from its place of business in the State of Illinois to

Complaint

19 F. T. C.

purchasers thereof located in various States of the United States, other than the State of Illinois, and said respondent has also been and is now engaged in the securing and sale of subscriptions to various periodicals on the club or combination subscription plan, which periodicals are thereafter shipped and distributed by the several publishers thereof from the State or States of the Union in which they are published to purchasers thereof located in various States of the United States other than the State or States in which the said periodicals are published. In the course and conduct of its business as aforesaid, The Geographical Publishing Company was and is in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. The National Geographic Society is a corporation organized under the laws of the District of Columbia in the year 1888 as a scientific and educational association not organized for profit. It publishes a periodical known as the "National Geographic Magazine", which is not sold on news stands or by subscription, but is distributed among the members of said National Geographic Society as one of the privileges accruing from the payment of annual dues. The said National Geographic Society has acquired a valuable goodwill in its said magazine on account of the interest and accuracy of the contents of the same; the magazine of said society being well and favorably known to the reading public of the United States, and the members of said National Geographic Society being scattered throughout the United States.

PAR. 4. In the course and conduct of its aforesaid business in the publication, sale, and distribution in commerce of its maps, atlases, and books, and in the securing of subscriptions to periodicals published and distributed in commerce by other concerns, the respondent, through its salesmen or solicitors, has made and makes the following statements and representations to customers and prospective customers in soliciting the sale of and selling its own products and in soliciting and securing subscriptions to the periodicals of said other concerns:

(a) That the said salesmen or solicitors were "from the National Geographic Society";

(b) That they were "with the National Geographic Society";

(c) That they were "representing the National Geographic Society";

(d) That certain of the subscriptions which they took included the National Geographic Magazine;

(e) That they were subscription agents for the National Geographic Society and authorized to take subscriptions for the National Geographic Magazine;

(f) That they were photographers in the employ of the National Geographic;

(g) That they represented "the Geographic";

(h) That the National Geographic Society was a subsidiary of The Geographical Publishing Company;

(i) That an atlas which they were selling, and which in some cases was given as a premium was sponsored by the National Geographic Society;

(j) That the atlas referred to was published by the National Geographic Society;

(k) That the atlas referred to was prepared by the National Geographic Society, although published by the Geographical Publishing Co.;

when in truth and in fact there was no connection between the National Geographic Society and The Geographical Publishing Company; when in fact neither The Geographical Publishing Company nor its representatives were agents for or representatives of the National Geographic Society and were not authorized to solicit subscriptions for any of its publications; and when in fact the National Geographic Society did not prepare, sponsor, or publish the atlas sold and distributed by The Geographical Publishing Company. The said salesmen or solicitors of The Geographical Publishing Company, being duly authorized by respondent and acting in the course of their employment, further stated and represented to customers and prospective customers that the sale or subscription offers or plans which they submitted were made only to a limited number of persons in certain prescribed classifications; when in truth and in fact, no such special or limited plans were followed or carried out.

PAR. 5. That the statements and representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the belief that the respondent is an agent for or a representative of the National Geographic Society, or that the National Geographic Society has prepared, sponsored, or published the atlases sold and distributed by respondent, or that the respondent was connected with the National Geographic Society in some way or that the National Geographic Society had authorized the respondent to solicit subscriptions to its publications, or that the salesmen or solicitors of the respondent were offering subscription offers or plans to a limited

Order

19 F. T. C.

number of persons in certain prescribed classifications when such were not the facts. That said representations of respondent have had and do have the tendency and capacity to induce members of the public to purchase its aforesaid products and to purchase from respondent subscriptions to the publications of other concerns because of the erroneous beliefs engendered, as above set forth, and to divert trade or tend to divert trade to respondent from concerns likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 6. The above acts and things done by respondent are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing before the Federal Trade Commission upon the respondent's amended 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 methods of competition charged in the complaint, and the Commission being fully advised in the premises—

It is now ordered, That the respondent, the Geographical Publishing Company, a corporation, its agents, representatives, officers, servants, and employees, in connection with the sale or offering for sale in interstate commerce, its atlases, books, magazines, journals, and other publications, whether printed and published by respondent or not, cease and desist from advertising, publishing, or representing in any manner:

(a) That its salesmen or solicitors engaged in the distribution and sale of the said products of the respondent are from National Geographic Society.

(b) That such salesmen or solicitors are "with the National Geographic Society."

(c) That such salesmen or solicitors are representing the National Geographic Society.

(d) That certain of the subscriptions for which the salesmen and solicitors of respondent are selling and/or offering for sale include the National Geographic Magazine.

(e) That such salesmen or solicitors are or ever were subscription agents for the National Geographic Society and authorized to take subscriptions for the National Geographic Magazine.

(f) That such salesmen or solicitors are or ever were photographers in the employ of National Geographic Society.

(g) That such salesmen and solicitors represent "The Geographic."

(h) That the National Geographic Society is or was a subsidiary of The Geographical Publishing Company, the respondent herein.

(i) That an atlas which said salesmen and solicitors of respondent are selling and which in some cases is given as a premium, is or ever was sponsored by the National Geographic Society.

(j) That the atlas referred to was published by the National Geographic Society.

(k) That the atlas referred to was prepared by the National Geographic Society, although published by The Geographical Publishing Company, the respondent herein.

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 with the order herein set forth.

Complaint

19 F. T. C.

IN THE MATTER OF

AMERICAN MERCHANDISE CO., INC.,¹ AND HARRY GREENBERG AND LEO JOSEFSBERG, COPARTNERS, DOING BUSINESS UNDER THE TRADE NAME GREENBERG & JOSEFSBERG, ETC.

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

Docket 2238. Complaint, Oct. 11, 1934—Order, Nov. 30, 1934

Consent order requiring respondents Greenberg and Josefsberg, doing business as Greenberg & Josefsberg, G. & J. Manufacturing Co., etc., their agents, etc., to cease and desist, in connection with the sale in interstate commerce of imported metal measuring tapes in domestic coil cases, and cuticle scissors—

- (a) Selling metal tapes made in a foreign country and sold in a coiling case marked "made in the U. S. A.", as a single article, unless the name of the country of origin of the metal tapes is distinctly and plainly marked on the tapes on the part thereof readily accessible to view to a purchaser or a prospective purchaser; and
- (b) Representing or causing dealers to represent, by means of cards or labels, upon which or in connection with which cuticle scissors are sold by the respondents that such scissors are hardened, tempered, and heavy nickel-plated, unless and until they are in fact made of hardened steel and tempered and heavy nickel-plated; and

Ordered further, That the complaint be and is dismissed against respondent American Merchandise Co., Inc., for the reason that said respondent is not and never has been engaged in business.

Mr. Edward E. Reardon for the Commission.

Mr. Reuben Speiser, of New York City, for respondent.

COMPLAINT

Count 1

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 the American Merchandise Co., Inc., and Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name of Greenberg & Josefsberg, and under the trade name G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., hereinafter re-

¹ Complaint dismissed as to respondent American Merchandise Co., Inc., for the reason that said respondent is not and never has been engaged in business.

ferred 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. Respondent, American Merchandise Co., Inc., is a corporation, incorporated on or about June 18, 1933, under the laws of the State of New York, and having its usual and principal place of business at the same place as the place of business of the other respondents in the City of New York at all times since its incorporation.

PAR. 2. Respondents Harry Greenberg and Leo Josefsberg are and have been copartners, doing business under the trade name, Greenberg & Josefsberg, and having at all times since, on, or about January 21, 1930, a usual place of business in the City of New York.

PAR. 3. Respondents, Harry Greenberg and Leo Josefsberg are and have been copartners doing business under the trade names G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., at all times since, on, or about January 21, 1930, at the same place of business mentioned and referred to in paragraph 2 hereof.

PAR. 4. During all of the times above mentioned, the respondents, respectively, are and have been engaged in the importation of merchandise, household articles, and novelties, including the metal measuring tapes mentioned and referred to in paragraphs 5, 7, and 8 hereof, from foreign countries to the United States, and in the business of the sale of such merchandise, and other articles of domestic manufacture, such as cuticle scissors, including the cuticle scissors mentioned and referred to in paragraphs 2, 3, 4, and 5 of the second count herein, to individuals, firms, and corporations, dealers therein and users thereof, located throughout the various States of the United States.

PAR. 5. The respondents, during all the times above mentioned and referred to, have caused and still cause the articles or products mentioned and referred to in paragraph 4 hereof, when sold by them, respectively, to be transported from the State of New York, or the State or origin of the shipment, to, into, and through other States and the District of Columbia to the purchasers.

PAR. 6. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged in the business of the manufacture and of the importation

and of the sale of household articles and novelties, including metal measuring tapes and cuticle scissors, to dealers for resale by them to the public, and to members of the public, purchasers and users thereof, located in the District of Columbia and in the various States of the United States. The sellers have caused the merchandise, including metal measuring tapes and cuticle scissors when so sold by them, respectively, to be transported from the State of the seller or from the State of origin of the shipment, to, into, and through other States and the District of Columbia, to the purchasers.

PAR. 7. During all the times above mentioned and referred to the respondents are and have been in substantial competition in interstate commerce in the sale of household articles and novelties, including metal measuring tapes and cuticle scissors with the other individuals, firms, and corporations, referred to as sellers in paragraph 6 hereof.

PAR. 8. During the times above mentioned the respondents, respectively, imported and caused to be imported certain metal measuring tapes from Czechoslovakia which they caused to be sold, coiled, respectively, in a case provided with a coiling spring to which one end of the tape was permanently attached. The case, coiling spring, and other parts used in encasing the tape were caused by respondents to be made, and the measuring tape and the case and coiling spring to be assembled, in the United States for sale as a single complete product. The case, at all times when sold by respondents, as set forth in paragraph 4 hereof, and when resold by dealers to the public, was stamped on the outside with the legend "Made in U. S. A."; the metal tape was stamped, immediately at the end attached to the coil spring, with the legend "Made in Czechoslovakia", so that the legend was not visible and could not be read unless the tape was fully drawn out of its case.

PAR. 9. Among the purchasers of metal tapes and other household articles and novelties, there are many dealers therein and users thereof in the United States who prefer to buy and use such articles of domestic manufacture, rather than those produced in foreign countries.

PAR. 10. The metal tapes of respondent above referred to were displayed for sale by dealers and sold to purchasers, users thereof, coiled in their cases, and the manner in which the cases and tapes were respectively marked "Made in the U. S. A." and "Made in Czechoslovakia", as above set forth, tended to and did prevent purchasers from observing the legend "Made in Czechoslovakia" on the metal tapes at the time of purchase, so that purchasers and prospective purchasers, dealers and members of the public, upon reading

the legend "Made in the U. S. A." on the cases were deceived into the belief that the case and the tape were one complete article, all parts of which were made in the United States.

PAR. 11. The practices of the respondents, respectively, in causing the tapes and their cases to be assembled, marked, and sold as above set forth, had the capacity and tendency to deceive and mislead members of the public, dealers in and users of metal tapes and they were thereby deceived and misled into purchasing the said metal tapes of the respondents in preference to metal tapes produced by American manufacturers and the respondents have thus caused trade to be diverted to them from their competitors.

PAR. 12. The above acts and things done and caused to be done by the respondents are and were 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.

Count II

PARAGRAPH 1. Repeats and realleges each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of count I hereof, as fully and completely and with the same force and effect as if the same were set forth herein and said paragraphs are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. During all the times above mentioned the cuticle scissors mentioned and referred to in paragraphs 4, 5, 6, and 7 hereof, were not manufactured by the respondents or by either of them. The respondents caused the said cuticle scissors to be manufactured by others of cold-rolled steel and to be mounted upon paper cards on which the respondent caused the following statements and representations to be printed:

Solid Steel Scissors—Heavy Nickel Plated—Hardened, Tempered, Sharp-ened—A. G. & J. Product.

The said scissors were not hardened. They were made of soft steel. They were not tempered. They were not heavy nickel plated.

PAR. 3. The respondents sold the cuticle scissors to dealers, as set forth in paragraph 4 hereof, mounted upon the paper cards above described with the knowledge and with the intent that the scissors would be displayed for resale and resold by the dealers, so mounted, to members of the public who purchase cuticle scissors for use, and

Order

19 F. T. C.

the dealers who purchased them from the respondents, resold them during the times above mentioned, so mounted and described, to members of the public who bought the same for their use.

PAR. 4. The manner in which the cuticle scissors above mentioned and referred to were marked, branded, and described, and offered for sale and sold by the respondent to dealers and through the dealers to the members of the public, as above set forth, had the capacity and tendency to deceive and mislead purchasers of cuticle scissors and they were deceived and misled into the belief that the respondents under the name G. & J. Manufacturing Co. were the manufacturers of the cuticle scissors, and that, as such manufacturers, they had made the scissors of hardened, tempered steel and that the scissors were heavy nickel plated; and in reliance upon such belief into purchasing respondents' cuticle scissors.

PAR. 5. The practices of respondents, respectively, in causing the cuticle scissors to be mounted, described, and sold, as above set forth, had the capacity and tendency to deceive and to mislead members of the public, dealers in and users of cuticle scissors, and they were thereby deceived and misled into purchasing the said cuticle scissors of the respondents in preference to cuticle scissors manufactured of hardened, tempered steel and heavy nickel plated sold by respondents' competitors, and the respondents have thus caused trade to be diverted to them from their competitors.

PAR. 6. The above acts and things done and caused to be done by the respondents are and were 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 AND ORDER OF DISMISSAL

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission, on October 11, 1934, issued its complaint against the above named respondents, in which it is alleged that the 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 November 23, 1934, the respondents filed their answers to the said complaint, wherein the respondent, American Merchandise Co. Inc., denies the allegations of the complaint, excepting the allega-

-478

Order

tions respecting its corporate existence, which it admits, and wherein the respondents, Harry Greenberg and Leo Josefsberg, copartners, as above set forth, consent that the Federal Trade Commission may make, enter, and serve upon them in accordance with the provisions of paragraph (b) of rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of metal measuring tapes made in, and imported from a foreign country to the United States, the coiling cases of which, made in the United States, were marked with the legend, "Made in U. S. A.", in such manner as to cause purchasers to believe that the metal measuring tape coiled in them was made in the United States, and in connection with the sale in interstate commerce of cuticle scissors marked:

Sold Steel Scissors—Heavy Nickel Plated—Hardened, Tempered, Sharpened—A. G. & J. Product,

and the Commission being fully advised in the premises:

It is now ordered, That the respondents, Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name, Greenberg & Josefsberg, and under the trade names, G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., their agents, employees, and representatives, in connection with the sale and the advertising and offering for sale of metal measuring tapes and cuticle scissors in interstate commerce do—

Cease and desist (1) From the sale of metal measuring tapes made in a foreign country and sold in a coiling case marked, "Made in the U. S. A.", as a single article, unless the name of the country of origin of the metal tapes is distinctly and plainly marked on the tapes on the part thereof readily accessible to view to a purchaser or prospective purchaser;

(2) From representing or causing dealers to represent by means of cards or labels upon which or in connection with which cuticle scissors are sold by the respondent that such scissors are hardened, tempered, and heavy nickel-plated unless and until the cuticle scissors so sold and represented are in fact made of hardened steel, and tempered, and heavy nickel-plated.

It is further ordered, That the said respondents, Harry Greenberg and Leo Josefsberg, copartners, doing business under the trade name, Greenberg & Josefsberg, and under the trade names, G. & J. Manufacturing Co., G. & J. Products, and American Merchandise Co., shall, within 30 days after the date of service upon them of this order, file with the Commission a report in writing, setting forth

Order

19 F. T. C.

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

It is further ordered, That the complaint be and the same hereby is dismissed as to the respondent, American Merchandise Co., Inc. for the reason that said respondent is not and never has been engaged in business.

ORDERS OF DISMISSAL, OR CLOSING CASE

HEADLEY CHOCOLATE Co. Complaint, April 30, 1930. Order, June 20, 1934. (Docket 1803.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record in this matter closed, after answer, by the following order:

This matter coming on for consideration and the Commission being fully advised in the premises,

It is ordered, That the record in this matter be closed for the reason that the said respondent corporation has been adjudicated a bankrupt, its assets distributed, and the charter of said corporation forfeited on February 16, 1934 for nonpayment of taxes.

Appearances: *Mr. Henry C. Lank* and *Mr. G. Ed. Rowland* for the Commission; *Cook & Markell*, of Baltimore, Md., for respondent.

ATLAS DOLL & TOY Co., INC. Complaint, January 25, 1934. Order, June 26, 1934. (Docket 2159.)

Charge: Pirating design, and simulating product, of competitor, with effect of misleading consuming public as to source of manufacture, and capacity and tendency so to do; in connection with manufacture and sale of toys and games.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission, and the Commission having duly considered the matter and being fully advised in the premises,

It appearing to the Commission that there is no further public interest in the Commission's prosecution of this complaint, it is hereby dismissed for that reason.

Appearances: *Mr. Robt. N. McMillen* for the Commission; *Mr. Henry G. Burke*, of Baltimore, Md., for respondent; *Weil, Gotshal & Manges* of New York City (amicus curiae) for Federated Textile Industries, Inc. and League for the Suppression of Design Piracy.

MIRACLE WAX Co. Complaint, July 2, 1932. Order, July 3, 1934. (Docket 2056.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to nature of product; in connection with the manufacture and sale of a floor polish.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard on the complaint, the answer thereto, the testimony and evidence, briefs and oral arguments, and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the complaint in this proceeding be and the same is hereby dismissed.

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Eilers & Schaumberg*, of St. Louis, Mo. and *Littlepage, Littlepage & Spearman*, of Washington, D. C., for respondent.

RESEARCH PRODUCTS CORPORATION. Complaint, October 18, 1933. Order, July 3, 1934. (Docket 2119.)

Charge: Advertising falsely or misleadingly as to qualities or properties of products; in connection with the sale of a dental amalgam alloy.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard on the complaint, the answer thereto, the testimony and evidence, briefs and oral arguments, and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the complaint in this proceeding be and the same is hereby dismissed.

Appearances: *Mr. Henry C. Lank* for the Commission.

CINCINNATI CANDY Co. Complaint, October 24, 1932. Order, July 7, 1934. (Docket 2073.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed by the following order:

This matter coming on to be heard and the Commission being fully advised in the premises—

It is ordered, That the record in the matter be closed for the reason that said respondent is no longer in business and that the corporation is in the process of dissolution.

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. W. J. Fromhold* (Receiver), of Cincinnati, Ohio, for respondent.

JACOB BRAUER AND MARTIN COHEN, individually and as copartners, trading as HECHT-COHEN & Co. Complaint, July 11, 1930. Order, July 11, 1934. (Docket 1855.)

Charge: Using lottery scheme in merchandising; in connection with the sale of various articles of merchandise.

Record closed by the following order: *

This matter coming on for the consideration of the Commission, and the Commission being fully advised in the premises—

It is ordered, That the record in the matter be closed for the reason that the partnership and business of the respondents is no longer in existence, and the partners are not conducting the business against which complaint was made.

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. Lucius Q. C. Lamar* and *Mr. J. Bond Smith*, of Washington, D. C., and *Mr. John A. Nash*, of Chicago, Ill., for respondents.

BADGER CANDY Co. Complaint, June 10, 1930. Order, July 17, 1934. (Docket 1841.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record closed by the following order:

This matter coming on for consideration and the Commission being fully advised in the premises—

It is ordered, That the record in the case be and the same is hereby closed for the reason that the assets of the corporation have been disposed of and the corporation has been dissolved in accordance with the laws of the state of its incorporation.

Appearances: *Mr. Henry C. Lank* for the Commission.

NEW YORKER COSMETIC CORP. Complaint, January 5, 1934. Order, August 25, 1934. (Docket 2145.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to qualities, properties, or results to be obtained from using product and as to product being imported; in connection with the manufacture and sale of face creams and cosmetics.

Record closed by the following order:

This matter coming on to be heard and the Commission being fully advised in the premises—

It is ordered, That the files be and the same are hereby closed without further action at this time, for the reason that the officers of the corporation cannot be located.

Appearances: *Mr. Henry C. Lank* for the Commission.

S. C. COUMBE Co., ET AL.¹ Complaint, March 18, 1931. Order, September 5, 1934. (Docket 1928.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of log house pecan loaves, with punch boards.

¹ In addition to respondent S. C. Coumbe Co., there was joined as respondent Stanley C. Coumbe in his individual capacity and as president of aforesaid respondent corporation.

Record closed by the following order:

This matter coming on to be heard and the Commission being advised that the respondent corporation is no longer doing any business, but is inactive although not formally dissolved and the individual respondent, S. C. Coumbe, being engaged in the business of a merchandise broker and not in the business of manufacturing and distributing candy—

It is ordered, That the files in the above entitled matter be closed without further action at this time.

Appearances: *Mr. Henry C. Lank* for the Commission; *Guesmer, Carson & MacGregor*, of Minneapolis, Minn., for respondent.

WELDON-THOMAS, INC., ET AL.² Complaint, December 7, 1933. Order, September 6, 1934. (Docket 2134.)

Charge: Misrepresenting and concealing business status and identity, securing business fraudulently through consumer purchase plans not carried out, and pretended free product, and misrepresenting nature and value of product offered; in connection with sale of suits and overcoats direct to public through the "suit club" instalment plan.

Record closed by the following order:

This proceeding having been fully considered by the Federal Trade Commission, and the Commission being fully advised in the premises—

It is ordered, That this case be closed for the following reasons:

The Attorney General for the State of New York, acting under authority of the "Anti-Racketeering" statutes of that State, has instituted criminal proceedings in connection with the above style matter.

In connection with the institution of such proceedings the last known place of business conducted by respondents in New York City has been raided by police authorities and correspondence and records covering a period of years seized.

Warrants are outstanding against Albert Lewis and Herbert (Bert) Green, moving spirits in connection with the operations described in the Commission's complaint of December 7, 1933, in which warrants said respondents are charged with disregarding subpoenas of the Attorney General of New York; a charge of larceny has been preferred and is now pending against Herbert (Bert) Green; the said Green was released on bond, gave a fictitious address, and thereafter forfeited his bond; and neither

²In addition to said corporate respondent, there was joined as respondent Ellison-Gibbons, Inc., both New York corporations; Albert Lewis, in his individual capacity and as president and treasurer of said corporations (also according to the complaint, sole stockholder therein) and also as variously trading under the names L. J. Allen Co. and Model Tailoring Co.; and Bert Green, described in the complaint as the general manager of the two corporations and general manager for respondent Albert Lewis in the conduct of the latter's business carried on under the aforesaid trade names.

Albert Lewis nor Herbert (Bert) Green can be located by police authorities.

All business operations by any of the respondents named in the complaint aforesaid have ceased and terminated and the last known places of business conducted by the said respondents have been closed up and abandoned.

Appearances: *Mr. Marshall Morgan* for the Commission.

RADIUM ORE REVIGATOR Co. (a Nevada Corporation), RADIUM ORE REVIGATOR Co. (a Delaware Corporation). Complaint, February 3, 1930. Order, September 20, 1934. (Docket 1753.)

Charge: Advertising falsely or misleadingly as to government endorsement of product, and qualities and characteristics thereof; in connection with the manufacture and sale of earthenware water jars.

Record closed by the following order:

This case coming before the Commission on the pleadings, the record taken herein and memoranda by the acting chief counsel and the trial attorney in charge of the proceeding, and it appearing—

(a) That one respondent corporation went out of existence several years ago for failure to pay the corporate franchise tax;

(b) That the other respondent corporation has passed into ownership of a third corporation and has gone out of business, and that the vendee company has gone into bankruptcy, while, at a trustee's sale, the remaining merchandise concerned in this case, trifling in amount, went into the hands of a buyer who has since sold all of it in intrastate commerce;

(c) That respondent's trade marks and good will were obtained by another, a corporate purchaser, which may or may not eventually become active; that the business is not now being conducted and the probability of renewed activity is remote; and

(d) That, since interstate commerce in the merchandise involved has entirely ceased and the public interest is now insubstantial, the case is deficient in the requirements laid down by the Commission's enabling act:

Now, therefore, The Commission being fully advised in the premises, hereby orders that this proceeding be, and the same hereby is, closed.

Appearances: *Mr. Eugene W. Burr* for the Commission; *Mr. Elmer Haslett*, of San Francisco, Calif., for respondents.

AMIESITE ASPHALT COMPANY OF AMERICA AND AMIESITE CORPORATION. Complaint, May 16, 1932. Order, September 26, 1934. (Docket 2036.)

Charge: Threatening infringement suits, not in good faith but with intent and effect of intimidating competitors' customers and restrain-

ing competition; in connection with the manufacture and sale of a road-paving material known as "amiesite".

Record closed by the following order:

This case coming on for consideration and it appearing: (a) That the same has been, since February 8, 1933, on the suspense calendar of this Commission pending the outcome, in the Third Circuit of the United States Circuit Court of Appeals, of litigation brought by respondent herein, Amiesite Asphalt Company of America, and involving in part the same issues as those herein involved; (b) that the said Court, on September 19, 1934, handed down an opinion whereby the trial court was affirmed in the dismissal of plaintiff's bill;^a and (c) that the matters herein in controversy are so far settled by the aforesaid action in said court that there is no public interest involved in any further proceeding herein by this Commission; and the Commission being fully advised, both by memoranda of its acting chief counsel and trial counsel, and otherwise—

Now therefore, It is ordered that this case is hereby removed from the suspense calendar and that same be, and it hereby is, closed.

Appearances: *Mr. Eugene W. Burr* for the Commission; *Hepburn & Norris*, of Philadelphia, Pa., for respondents.

CANDY BRANDS, INC. Complaint, October 28, 1931. Order, October 16, 1934. (Docket 1982.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record closed by the following order:

This matter coming on to be heard and the Commission being fully advised in the premises and it appearing that receivers were appointed for this corporation by the United States District Court for the District of Massachusetts in Equity No. 3641, and ancillary receivers appointed by the United States District Court for the Eastern District of New York in Equity No. 6309, and being further advised that such receivers have liquidated the assets of the corporation and have been finally discharged and that the corporation is now dissolved—

It is ordered, That the files in this case be closed without further action at this time.

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

SCHULER CHOCOLATE FACTORY, INC. Complaint, November 3, 1930. Order, November 3, 1934. (Docket 1874.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

^a72 F. (2d) 946.

Record closed, after answer, by the following order:

This matter coming on to be heard and the Commission being advised that the respondent is in receivership and not now engaged in the practices complained of, that its factory has been sold at foreclosure and is now leased to another corporation,

It is ordered, That the files be and the same are hereby closed without further action at this time.

Appearances: *Mr. Henry C. Lank* for the Commission; *Brown, Somsen & Sawyer*, of Winona, Minn., for respondent.

THE CENTURY Co. Complaint, September 17, 1934. Order, November 14, 1934. (Docket 2231.)

Charge: Advertising falsely or misleadingly as to puzzle prize contests through making false or grossly exaggerated statements or withholding and concealing material facts that should be disclosed; in connection with the sale of toilet articles and cosmetics.

Record closed by the following order:

This matter coming on to be heard, on the recommendation of the chief counsel that the files herein be closed, for the reason that respondent, formerly a corporation existing under and by virtue of the laws of the State of Iowa, has been dissolved, and was dissolved prior to issuance of complaint herein, in accordance with the laws of such State, and the Commission having considered the record and being now fully advised in the premises—

It is ordered, First, that the files herein be and hereby are closed; second, that the chief examiner be and hereby is directed to conduct an investigation into the activities of the individuals who conducted The Century Company, to ascertain, whether or not they are continuing the unfair practices charged in the complaint.

Appearances: *Mr. James M. Brinson* for the Commission.



STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST

1170. False and Misleading Advertising — Hardwoods. — Nicolai-Neppach Co., a corporation, engaged in the sale and distribution in interstate commerce of domestic and imported hardwoods, 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.

Mahogany is the product of the genus "swietenia", tribe "swietenioideae" of the tree family scientifically called "meliaceae." The genus "swietenia", of which there are several known species, is the only one which produces true mahogany. Trees of the swietenia group grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the genus "swietenia" of this tree family grows in the Philippine Islands, except as specifically planted for decorative or experimental purposes.

Nicolai-Neppach Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "mahogany" in its advertisements and advertising matter distributed in interstate commerce, as a trade designation for its products, so as to import or imply that such products are derived from trees of the meliceae family, when such is not the fact; or unless, if the product is derived from trees or families other than the "meliaceae" and is that product imported from the Philippine Islands and known to the trade and purchasing public as "Philippine mahogany", and the word "mahogany" is used to designate or describe said product, in which case the said word "mahogany" shall be preceded by the word "Philippine" printed in type equally as conspicuous as the word "mahogany."

¹For false and misleading advertising stipulations effected through the Commission's special board. See p. 555, *et seq.*

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, Apr. 24, 1934, to Dec. 2, 1934, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1169, inclusive—may be found in vols. 10 to 18 of the Commission's decisions.

Nicolai-Neppach Co. 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. 25, 1934.)

1171. False and Misleading Advertising—Mechanical Device or Truss.—William S. Rice, Inc., a corporation, engaged in the sale and distribution in interstate commerce of a mechanical device or truss designated "Rice comfort support" and of a liquid compound labeled "lymphol" for use in connection with its so-called "Rice method" for the alleged treatment and cure of rupture or hernia, 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.

William S. Rice, Inc., in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from: Representing that its so-called "Rice method" or its said devices will help to return the protrusion of an irreducible rupture without operation, dangerous manipulation, or shock; representing its so-called "Rice method" as being successful in the treatment or cure of rupture other than as a mechanical support to prevent protrusion which, when properly held in place for a sufficient period of time, may in some instances assist nature in perfecting a healing of the rupture; the use of such statements and representations as "it makes no difference whether your rupture is large or small, whether it is of long standing or recent development, whether you have a truss to hold or the trouble is already beyond your control", or of any other similar statements or representations that do not properly and accurately describe the results to be obtained from the use of said support and/or compound; the use of statements and representations so as to import and imply that its so-called "Rice method" is a "cure" or a "perfect cure" or a "permanent cure" or a "complete and lasting cure in all ages" or a "dependable means of home cure" for rupture or hernia, when such are not the facts; the use of statements and representations so as to import or imply that its compound labeled "lymphol", applied as directed, will tone up and strengthen the muscles or restore the covering muscles and tissues to a strong healthy condition, or of any other similar statement or representation that does not properly and accurately describe the therapeutic value of the said compound; the use of the words or phrases "made to order", or any other similar representation as descriptive of its product or device designated "Rice comfort support", so as to import or imply that the said product is specially manufactured to

meet the requirements of each particular purchaser, when such is not the fact.

William S. Rice, Inc., 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. 25, 1934.)

1172. False and Misleading Prices and Advertising and Violation of N. R. A. Codes.—Linde Store, Inc., is a corporation engaged in the sale and distribution of furniture in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Lynch Sales Co. is a corporation engaged in the business of planning and conducting special sales for manufacturers, wholesalers, and retailers in various States of the United States, acting therein as an authorized agent for the stores by which it is employed from time to time. In the course and conduct of its business, the work and service of the Lynch Sales Co. has a direct and substantial effect upon the interstate commerce of its employers; and at all times herein referred to, the Lynch Sales Co. was in competition with other corporations, individuals, firms, and partnerships similarly engaged.

Part I

On the 28th day of December 1933 a contract and agreement was signed and entered into between said Linde Store, Inc., and the Lynch Sales Co., whereby, in consideration of the payment to the said Lynch Sales Co. of a certain compensation, the Lynch Sales Co. undertook and agreed to write and plan the necessary advertisements, to supervise the general arrangement and rearrangement of stock, and to furnish the personal services of a competent person to assist in the preparation and sale of furniture and other merchandise for a special sale to be put on by said Linde Store, Inc.; and thereafter, to wit, beginning on the 10th day of January and ending on the 3d day of March 1934, a special sale of the furniture and other merchandise of said Linde Store, Inc., was begun and carried on under the joint management and supervision of the aforesaid corporations, in the course of which the following methods, acts, and practices were used:

(a) Display advertisements were placed in a number of newspapers having a wide interstate circulation, which advertisements and advertising matter read in part as follows:

GREAT QUARTER-MILLION DOLLAR BUSINESS ADJUSTMENT SALE

Of the Entire and Complete Stocks of

THE LINDE STORE, INC.

Involving quarter-million dollars' worth of high-grade furniture and furniture-store merchandise * * * To be sold at once * * * Without reserve or limit * * * At prices and conditions that will cause a real sensation in Philadelphia and this section of the United States * * * In justice to yourself and family * * * Don't miss this sale!

\$8.50 coffee tables, solid walnut, Duncan Pfyfe type, separate glass tray, while they last at \$3.47; \$395 living-room, finest construction, splendid wool-tapestry cover, 2-piece, will go at \$197.87; \$1.95 full-size pillows, fine quality, sanitary feather pillows, full size, while they last, at each, 97¢; \$8.75 console tables, solid walnut console tables will go while they last at \$3.47; \$9.50 solid walnut occasional tables will go in this sale, while they last, at \$4.37; \$7 night tables, walnut tables, will go while they last, \$3.17; \$2 drum tables—drum tables will go in this sale, while they last, at 87¢; \$1.50 grandmother rugs—grandmother rag rugs, 27 x 52, while they last, at 57¢; \$4 carpet sweepers, silent hand carpet sweepers, while they last, \$1.97;

when in truth and in fact, the prices set forth in the aforesaid advertisements and advertising matter as the represented selling value of the merchandise referred to were not the prices at which the same were ordinarily sold or intended to be sold in the usual course of trade, but the prices and selling value of said merchandise were exaggerated and much in excess of the prices at which said products were sold or intended to be sold in the usual course of business.

Part II

Proceeding further in the aforesaid matter under an act of Congress approved June 16, 1933, known as "The National Industrial Recovery Act", and specifically under subsection (b) of section 3 of title I thereof, the Federal Trade Commission likewise, through its chief examiner, caused an investigation to be made of the methods of competition in commerce used by the aforesaid Linde Store, Inc., a corporation, and the Lynch Sales Co., a corporation, and from representations made concerning the methods used in the sale of their products in interstate commerce and/or affecting interstate commerce, the Federal Trade Commission is of the opinion there is reason to believe that the aforesaid corporations have been using unfair methods of competition in violation of section 1 of article IX of the Code of Fair Competition for the Retail Trade, as approved October 21, 1933, by the President of the United States under provisions and by virtue of the authority of the aforesaid act known as "The National Industrial Recovery Act."

It now appearing that the Federal Trade Commission, through its Chairman, will likewise accept a stipulation of the facts, subject to the approval of the Federal Trade Commission, and agreement by the aforesaid Linde Store, Inc., and the Lynch Sales Co., to cease and desist forever from the use of the methods hereinafter set forth, and that Linde Store, Inc., and the Lynch Sales Co., are desirous of avoiding the issuance of a complaint and the taking of testimony:

It is further stipulated and agreed, by and between the aforesaid Garland S. Ferguson, Jr., Chairman of the Federal Trade Commission, and Linde Store, Inc., and the Lynch Sales Co., that in order to discontinue and dispose of this proceeding by agreement, the following true statement of facts may be taken as the facts in lieu of all further procedure:

That the said Linde Store, Inc., and the Lynch Sales Co. further, in pursuance of and while carrying out the terms of their said agreement and contract, caused the following and other similar statements and representations to appear in periodicals having a wide interstate circulation:

ODD BEDROOM PIECES

CONSISTING OF DRESSERS, VANITIES, CHESTS, CHAIRS, WARDROBES, HIGHBOYS, ETC.,
SENSATIONAL BARGAINS

\$35 vanities, walnut, go at \$12.97; group tables, formerly up to \$27.50, fiber and reed tables for cottage or sun room, while they last, at \$4.97.

REFRIGERATORS

\$39.50 to \$49.50 Gibson oak and metal refrigerators, \$19.97.

50¢ STAIR TREADS

9 x 18 nosed rubber stair treads, will go while they last, at 19¢; when in truth and in fact, the prices at which the merchandise referred to was advertised and sold were below the cost thereof to said Linde Store, Inc., and such merchandise was not advertised, marked, or sold as bona fide clearance merchandise; in violation of article VIII of the aforesaid Code of Fair Competition for the Retail Trade.

It is further stipulated and agreed by and between the said Garland S. Ferguson, Jr., Chairman of the Federal Trade Commission, and Linde Store, Inc., and the Lynch Sales Co., that said corporations hereby agree, and each for itself agrees to cease and desist from: (a) advertising, marking, or in any way representing merchandise with fictitious or exaggerated prices; and from making any false, fictitious, or misleading statements or representations concerning the value of their products, or the prices at which the same, or any of the same, are sold or intended to be sold in the usual course of trade; (b) advertising, selling, or offering to sell furni-

ture or other merchandise below cost; or if the same is sold below cost in the course of a bona fide clearance sale, such merchandise shall be advertised, marked, and sold as such, in compliance with the provisions of section 2 of article VIII of the Code of Fair Competition for the Retail Trade herein referred to.

It is also stipulated and agreed that if the Linde Store, Inc., and the Lynch Sales Co. 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. (Apr. 27, 1934.)

1173. False and Misleading Advertising—Sponges, Chamois Skins, Pumice, Felt, Industrial Chemicals, etc.—Fay-Cole & Co., Inc., a corporation engaged in the sale and distribution in interstate commerce of sponges, chamois skins, pumice, felt, industrial chemicals, and other products, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Fay-Cole & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "packers" and/or "manufacturers" in advertisements and advertising matter, on letterheads, billheads, or other literature, or through solicitors or salesmen, and from the use of any similar word or words of equivalent meaning which may have the capacity or effect to confuse, mislead, or deceive purchasers into the belief that said Fay-Cole & Co., Inc., is a packer of sponges, or that it owns, operates, or controls any plant or factory wherein the products which it sells and distributes in interstate commerce are packed or manufactured, when such is not the fact.

It is also stipulated and agreed that if Fay-Cole & Co., Inc., should 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. (May 10, 1934.)

1174. False and Misleading Brands or Labels and Advertising and Simulation—Petroleum Products.—Republic Oil Co., a corporation, engaged in business as a refiner of petroleum products, including motor lubricating oils, and in the sale and distribution thereof in interstate commerce. Standard Auto & Radio Supply Co., a corporation engaged directly and/or through its agencies, in the sale and distribution in interstate commerce of motor lubricating oil furnished it by said Republic Oil Co. pursuant to contract between the two said companies. Said corporations, 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.

Kendall Refining Co., engaged in business as a producer and refiner of petroleum products, including motor lubricating oil, and in the sale and distribution thereof in interstate commerce. It has widely advertised its motor lubricating oil over a period of years in interstate commerce by means of automobile maps, pamphlets, posters, in magazines, trade journals, and the like. It adopted and for a number of years has used in its said advertising matter the trade name "Kendall", together with the slogan "the 2,000-mile oil" for certain of its motor lubricating oil represented in said advertising matter as "made entirely from 100-percent Bradford grade of Pennsylvania crude" or "100-percent Pennsylvania, Bradford grade", and which product so advertised by said Kendall Refining Co. has become well and favorably known to and recognized by the purchasing public as and to be the product produced and/or refined and sold by said Kendall Refining Co.

Republic Oil Co. and Standard Auto & Radio Supply Co., in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist, either independently or from cooperating each with the other, in the use of advertisements or printed matter having interstate distribution and of labels affixed to the product placed in the channels of interstate trade and on which or in which advertising or printed matter and labels use is made of any trade designation and/or representation so as to simulate or otherwise confuse, mislead, or deceive purchasers into the belief that the said product is that of Kendall Refining Co., of Bradford, Pa., or that the said product is that product known to the trade and purchasing public as Pennsylvania oil and/or that the product is a product composed of oil produced from a Pennsylvania field or fields, when such is not the fact.

Republic Oil Co. and Standard Auto & Radio Supply Co. also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (May 11, 1934.)

1175. **Fake and Misleading Trade Name and Brands or Labels—Cigars.**—Garcia Havana Co., Inc., a corporation, engaged in the 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.

Garcia Havana Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "throw-outs" either independently or in connection or conjunction with the word "Tampa" or "Spanish" or with any other word or words as a trade brand or label for its products or otherwise to represent or designate 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. Said corporation also agreed to cease and desist from the use of the word "seconds" either independently or in connection with any other word or words to designate or represent its cigars so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that said cigars are second to the best cigars in quality, grade, and workmanship, when such is not the fact. Said corporation further agrees to cease and desist from the use on its brands or labels of the phrase or slogan "Regular 5¢ value" in conjunction with "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 said products were manufactured for the purpose of being sold and/or are sold in the regular course of business for 5 cents but that the price of said products has been reduced, when such is not the fact.

Garcia Havana Co., Inc., also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 14, 1934.)

1176. False and Misleading Advertising—Barometers and Thermometers.—The Chaney Manufacturing Co., a corporation, engaged in the manufacture of barometers and thermometers and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The Chaney Manufacturing Co. in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from stating or representing, directly or indirectly, in advertisements or advertising matter, or in any other way that United States or other patents are owned by the said corporation on the said combination or on the thermometer forming part of said combination, or that it owns active patents on the barometer of said combination, The said corporation also agreed to cease and desist from the use of the words "we own all patents on same" and "patented by" or of any other words of equivalent meaning in its said advertise-

ments or advertising matter so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation has the exclusive right to make, use, and sell, or that it owns an active patent or patents on said combination of thermometer and barometer or either the said thermometer or the said barometer, when such is not the fact.

The Chaney Manufacturing Co. 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. (May 16, 1934.)

1177. False and Misleading Trade or Corporate Name and Advertising—Drugs and Medical Appliances.—The American Home Health Service Laboratories, Inc., a corporation engaged in the sale of drugs and medical appliances and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

The American Home Health Service Laboratories, Inc., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from: the use of the word "laboratories" as a part of its corporate or trade name; and from the use of the word "laboratories", or of any other or similar word, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it owns, controls, or operates a laboratory wherein the products which it sells and distributes in interstate commerce are compounded, when such is not the fact; the use of any words, statements, or representations implying that its "American periodic relief compound tablets" are contraceptive or abortifacient, or which may confuse, mislead, or deceive purchasers into the belief that the same are anything more than an ordinary emmenagogue; the use of the words and phrases "combines safety with quick action", and/or "new discovery", and of any other words or phrases which may confuse, mislead, or deceive purchasers into the belief that said product is a new discovery, or that the same offers greater certainty or quickness of results than any other emmenagogue, when such is not the fact.

The American Home Health Service Laboratories, 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. (June 4, 1934.)

1178. **False and Misleading Brands or Labels—Sweaters.**—Wexler Knitting Mills, Inc., a corporation, engaged in the manufacture of men's and boys' sweaters, a part of which are composed of wool, others of cotton, and part of mixed wool and cotton; 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.

Wexler Knitting Mills, Inc., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the words and figures "guaranteed 100 percent pure spun yarn" as a brand or label with which to mark any of its products not composed entirely of wool yarn; and from the use of the words and figures "guaranteed 100 percent pure spun yarn" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so marked, labeled, branded, or represented are composed entirely of wool yarn, when such is not the fact.

Wexler Knitting Mills, 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. (June 18, 1934.)

1179. **False and Misleading Advertising—Wall Paper, Paste, and Paints.**—I. Kaplan, an individual, trading under the name and style I. K. Cut Rate Wholesale Paint and Wall Paper Co., engaged in the sale and distribution of wall paper, paste, and paints in the District of Columbia, 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.

I. Kaplan, in soliciting the sale of and selling her products in commerce, hereby agreed to cease and desist from the use of the words "sun proof" either independently or in connection or conjunction with the word "guaranteed" or "tested", 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 and tendency to confuse, mislead, or deceive purchasers into the belief that the color or colors of said products is or are proof against or impervious to the sun's rays when such is not the fact. The said I. Kaplan also agreed to cease and desist from the use of the statement or phrase "exclusive wall paper for season 1934", or of any other similar statement or representation, so as to import or imply or which may tend to confuse, mislead, or deceive purchasers into the

belief that the said products are patterns which are exclusive or new for the season indicated, when such is not the fact.

I. Kaplan also agreed that should she ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against her in the trial of the complaint which the Commission may issue. (June 18, 1934.)

1180. False and Misleading Advertising—Granite.—Adamant Quarry Co., Inc., a corporation, engaged in the quarrying of granite from its quarries located at Adamant, Vt., and in the sale and distribution of said products in a rough condition to stonecutters and manufacturers of monuments and memorials 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.

The Barre district within which alone Barre granite is produced or quarried, begins at the southerly part of the city of Barre, in Washington County, State of Vermont, and extends westerly about 2½ miles and southerly about 4 miles to and including Williamstown in Orange County. The granite produced from the quarries located within this district possesses qualities of texture, color, and durability which gives it peculiar fitness for use in the manufacture of monuments and memorials and for building construction, and because of such qualities said products have acquired a wide-spread reputation and popularity and the producers thereof have a valuable good will in the word "Barre" as applied thereto.

Adamant Quarry Co., Inc., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the words "Barre" and/or "Barre district", or either of them, in connection with the sale and distribution in interstate commerce of its products, to designate or describe any products not in truth and in fact produced in the Barre district; and from the use of the words "Barre" and/or "Barre district" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that any of its products are produced in the Barre district, when such is not the fact; and from stating and representing that the Federal Trade Commission has ruled that the stock of said company is known as Barre granite.

Adamant Quarry Co., 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. (June 29, 1934.)

1181. False and Misleading Brands or Labels—Electric-Light Bulbs or Lamps.—Gottlieb J. Wahlers, an individual trading as G. J.

Wahlers Co., engaged in the importation and sale in interstate commerce of bulbs for use in electric-light lamps, 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.

During all of the times herein mentioned and referred to, it was and now is a general custom for manufacturers of electric-light bulbs sold to the public in the United States to label, mark, or brand each lamp or bulb with the wattage thereof, allowing for certain tolerance of measure recognized in the manufacturing and distributing trade for such lamps or bulbs; and such marks or brands are relied upon by the public as a guide in purchasing the same.

Gottlieb J. Wahlers in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the sale and distribution of electric-light bulbs marked or branded with a wattage which is substantially less than the actual wattage thereof, after making due allowance for tolerance of measure; and from the sale and distribution of any such bulbs so marked or branded as to confuse, mislead, or deceive purchasers in reference to the actual wattage of such bulbs.

Gottlieb J. Wahlers 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 and in the trial of the complaint which the Commission may issue. (June 25, 1934.)

1182. False and Misleading Trade Name, Brands, or Labels, and Advertising—Shoes.—H. E. Ackerman, an individual, engaged as a wholesaler in the sale and distribution in interstate commerce of shoes, 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.

H. E. Ackerman, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with any name or with any other word or words, or as a trade brand, name, or designation for his products, or in advertising said products, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

H. E. Ackerman 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. (July 2, 1934.)

1183. **False and Misleading Trade Name and Brands or Labels—Shoes.**—L. B. Dudley Shoe Co., a corporation, engaged in the manufacture of children's shoes 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.

L. B. Dudley Shoe Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or names, or with any other word or words, or in any way as a trade name, brand, or designation for its products, or for the products of others, in any way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in accordance with the design and/or under the supervision of a doctor or doctors and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

L. B. Dudley Shoe 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. (July 6, 1934.)

1184. **False and Misleading Advertising—Citrus Fruits.**—Joe D. Longo, an individual trading as Longo Curb Market and Longo Fruit Market, engaged in the sale and distribution in interstate commerce of citrus fruits and in competition with other individuals, partnerships, 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.

The term "Indian River", when used to describe the origin of citrus fruits, refers to a territory on the East Coast of Florida along the Indian River and in the counties of Brevard, Indian River, St. Lucie, and Martin. The citrus fruits grown in the Indian River section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have built up a valuable good will in the term "Indian River" as applied to such fruits.

Joe D. Longo, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from advertising, stating, or representing that such products are Indian River

products, or are produced or grown in the Indian River region, when such is not the fact; and from the use of the words "Indian River", 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 his products are grown or produced in the Indian River region of Florida, when such is not the fact; and from the use of such words as "choice", "select", or "fancy" to describe products which are not of the first grade or are what are described and known as "run-of-the-grove" products. The said Joe D. Longo also agreed to cease and desist from the use in his advertisements and advertising matter, or in any way, of the words "From Grower to Consumer" or of the word "Grower", either independently or in connection or conjunction with any other word or words so as to have the capacity and tendency to mislead, confuse, or deceive the purchaser into the belief that the said individual grows or produces the fruit sold by him in interstate commerce when such is not the fact.

Joe D. Longo 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. (July 6, 1934.)

1185. False and Misleading Trade Name, Brands, or Labels and Advertising—Shoes.—George Wolfe, Samuel Wolfe, and Charles Wolfe, co-partners trading under the name and style of Wolfe Shoe Manufacturing Co., engaged in the manufacture of shoes for ladies, children, and youths, and in the sale and distribution of said products 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.

George Wolfe, Samuel Wolfe, and Charles Wolfe, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name, or with any word or words, or in any way as a trade name, brand, or designation for their products, or for the products of others, or in advertising said products in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

George Wolfe, Samuel Wolfe, and Charles Wolfe 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. (July 31, 1934.)

1186. **False and Misleading Trade Name and Advertising—Wood Veneers.**—William L. Marshall, Ltd., a corporation, engaged in the manufacture of wood veneers for the use in the manufacture of furniture 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.

The wood known as "Walnut" is the product of the genus "Juglans" of the tree family scientifically called "Juglandaceae", of which there are several known species.

William L. Marshall, Ltd., 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 any other word or words, as a trade name or designation for any of its products, so as to import or imply that such products are derived from the Walnut or "Juglandaceae" family, when such is not the fact; and from the use of the word "Walnut" as descriptive of its products in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are derived from trees of the Walnut or "Juglandaceae" family, when such is not the fact.

William L. Marshall, Ltd., 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. (July 31, 1934.)

1187. **False and Misleading Brands or Labels—Hosiery.**—Danville Knitting Mills, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Danville Knitting Mills, in soliciting the sale of and selling its hosiery in interstate commerce, hereby agreed to cease and desist from the use of the words "Pure Thread Silk Reinforced with Art Silk" as a brand or label for said hosiery or as representative or descriptive of its hosiery not composed of silk. Said corporation also agreed to cease and desist from the use of the word "Silk" either independently or in connection or conjunction with the word "Art" or with any other word or words or in any way as descriptive of its hosiery,

so as to import or imply that the said hosiery is composed of silk, when such is not the fact. If the hosiery is composed in substantial portion of silk and the word "Silk" is used as descriptive thereof, then in that case the word "silk" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Silk" is printed so as to indicate clearly that said hosiery is not composed wholly of silk and which will otherwise properly represent, define, and describe said hosiery so as to indicate clearly that the same is composed in part of a material or materials other than silk.

Danville Knitting Mills 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. (July 31, 1934.)

1188. **False and Misleading Trade Name, Brands or Labels and Advertising—Shoes.**—Lane Brothers Co., a corporation, engaged as a wholesaler and jobber of shoes and in the sale and distribution of women's and children's shoes 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.

Lane Brothers Co., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any other way as a trade designation, brand or label for its products, or in advertising said products which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said products are made in accordance with the design and are under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Lane Brothers Co. 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. (July 31, 1934.)

1189. **False and Misleading Trade Name, Brands, or Labels—Shoes.**—Bruin Shoe Co., Inc., a corporation, engaged as a wholesaler of shoes 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.

Bruin Shoe Co., Inc., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words or in any way as a trade brand, name, or designation for its products so as to have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services; when such is not the fact.

Bruin Shoe Co., 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. (July 31, 1934.)

1190. False and Misleading Trade Name, Brands or Labels and Advertising—Shoes.—Berkshire Shoe Co., a corporation, engaged as a jobber in the sale and distribution of shoes 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.

Berkshire Shoe Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor", or the abbreviation "Dr." in connection or conjunction with a name or any word or words, or in any way as a trade brand, name, or designation for its products, or in advertising said products, in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services when such is not the fact.

Berkshire Shoe Co. 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. (July 31, 1934.)

1191. False and Misleading Trade Name and Brands or Labels—Shoes.—Durand Shoe Co., a corporation, engaged in the manufacture of shoes 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.

Durand Shoe Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the

use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or names, or with any other word or words, or in any way as a trade name, brand, or designation for its products, or for the products of others, in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in accordance with the design and/or under the supervision of a doctor or doctors and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Durand Shoe Co. 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. (July 31, 1934.)

1192. False and Misleading Trade Name and Brands or Labels—Shoes.—Standard Shoe Co., Inc., a corporation, engaged as a wholesaler in the sale and distribution of shoes 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.

Standard Shoe Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any way as a trade name, brand, or designation for its products, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Standard Shoe Co., Inc., 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 31, 1934.)

1193. False and Misleading Trade Name and Brands or Labels—Shoes.—Sherwood Shoe Co., a corporation, engaged in the manufacture of shoes 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.

Sherwood Shoe Co., soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr.", in connection or conjunction with a name, or with any other word or words, or as a trade name, brand, or designation for its products, or in any way that may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services.

Sherwood Shoe Co. 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. (July 31, 1934.)

1194. False and Misleading Trade Names and Advertising—Vending Machines.—Willard F. Main, an individual, trading under the names and styles of W. F. Main, F. E. Machen Manufacturing and Distributing Co., Appleton Novelty Co., New Specialty Co., and Standard Manufacturing Co., engaged in the sale and distribution in interstate commerce of coin-operated vending machines and of confectionery for use therein, and in competition with other individuals, corporations, 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.

Willard F. Main, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from representing to purchasers and prospective purchasers that a profit of 120%, or any other sum, will be or is guaranteed to them from the use of the vending machine which they purchase, when in truth and in fact their contracts do not so specify and no such guaranty is, or is intended to be, carried out; representing to purchasers and prospective purchasers that their contracts guarantee them the enjoyment of exclusive territory in which to operate the vending machines purchased by them, unless the territory described in the contracts is in truth and in fact exclusive, and unless during the life of such contracts said Main refrains from selling or offering to sell his vending machines therein to any person or persons other than the holders of such contracts; the use in contracts of ambiguous and uncertain language and provisions which have the tendency to confuse, mislead, or deceive purchasers in any material respect in reference to the meaning thereof; the use of the word "Manufacturing" as a part of or in connection with any trade name under which to carry on his said business, in advertisements or advertising matter circulated in interstate com-

merce, or in any other way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that he owns, controls, or operates a shop or factory wherein the products which he sells in interstate commerce are manufactured, when such is not the fact.

Willard F. Main 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 on the trial of the complaint which the Commission may issue. (July 31, 1934.)

1195. **False and Misleading Brands or Labels—Collars, Shirts, etc.—**Cluett, Peabody & Co., Inc., is a corporation engaged in the manufacture of collars, shirts, underwear, ties, and handkerchiefs, 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.

Cluett, Peabody & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Linen" either independently or in connection or conjunction with any other word or words or in any way on its labels, or otherwise to represent, designate, or refer to its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers, or which may be used as means to mislead or deceive purchasers into the belief that said products are composed wholly of linen, a product made of hemp or flax; when such is not the fact, unless when said products are composed in substantial part of linen and the word "Linen" is used as a descriptive thereof, in which event the word "Linen" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Linen" is printed, so as to indicate clearly that said products are not composed wholly of linen, but are composed in part of a material or materials other than linen.

Cluett, Peabody & Co., 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. (July 31, 1934.)

1196. **False and Misleading Brands or Labels—Umbrellas.—**Follmer, Clogg & Co., Inc., a corporation, engaged in the business of manufacturing umbrellas 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.

Follmer, Clogg & Co., Inc., in soliciting the sale of and selling its said products in interstate commerce, hereby agreed to cease and desist from the use of the coined word "Amisilk" or of the word "silk" in connection or conjunction with the letters "Ami" or with any other letters, word, or words, or in any other way as a trade brand, label, or designation for, or otherwise to represent its said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are covered with a fabric composed of silk, the product of the cocoon of the silkworm, when such is not the fact.

Follmer, Clogg & Co., 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. (July 31, 1934.)

1197. False and Misleading Trade Name and Brands or Labels—Shoes.—Fine Shoe Co., a corporation, engaged in the manufacture of shoes 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.

Fine Shoe Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or names, or with any other word or words, or in any way as a trade name, brand, or designation for its products, or for the products of others, in any way which may have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in accordance with the design and/or under the supervision of a doctor or doctors and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Fine Shoe Co. 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. (Aug. 1, 1934.)

1198. False and Misleading Brands or Labels—Hosiery.—Charles W. Cromer, an individual, engaged in the manufacture of hosiery 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.

Charles W. Cromer, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the words "Pure Silk Thread Reinforced With Art Silk" as a brand or label for such hosiery, or as representative or descriptive of products not composed of silk; and from the use of the word "silk", either independently or in connection or conjunction with the word "Art" or with any other word or words or in any way as descriptive of his hosiery, so as to import or imply that said hosiery is composed of silk, when such is not the fact; or, if such hosiery is composed in substantial part of silk and the word "silk" shall be immediately accompanied by some other word or words, printed in type equally as conspicuous as those in which the word "silk" is printed, so as to indicate clearly that such hose is not composed wholly of silk, and which will otherwise properly represent, define, and describe such hosiery so as to clearly indicate that the same is composed in part of a material or materials other than silk.

Charles W. Cromer 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. (Aug. 3, 1934.)

1199. False and Misleading Trade Name, Brands, or Labels and Advertising—Shoes.—Nathan Marbach, Benjamin Marbach, and Philip Kimmel, copartners, trading under the firm name and style of Kimmel and Marbach Shoe Co., engaged as jobbers and wholesalers in the sale and distribution of shoes 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.

Nathan Marbach, Benjamin Marbach, and Philip Kimmel, in soliciting the sale of and selling their products in interstate commerce, hereby agreed, and each for himself agreed, to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any way as a trade brand, name, or designation for their products, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Nathan Marbach, Benjamin Marbach, and Philip Kimmel 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. (Aug. 3, 1934.)

1200. False and Misleading Trade or Corporate Name and Brands or Labels—Radio Sets.—Pyramid Radio Distributors, Inc., is a corporation engaged in the sale and distribution of radio sets in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Victor Talking Machine Company was organized as a corporation in 1901, under the laws of the State of New Jersey. It was engaged in the manufacture and sale of talking machines, talking-machine records, and other musical sound-reproducing devices. It solicited the sale of and sold its said products under its corporate name containing the word "Victor." It also advertised its said products under the trade name "Victor" in combination with "His Master's Voice" and other slogans. During the year 1929, Radio Corporation of America, a Delaware Corporation, organized a subsidiary corporation, RCA Victor Company, Inc., under the laws of Maryland. This corporation acquired control of Victor Talking Machine Company and obtained ownership of the trade name "Victor" which it has used continuously in connection with the sale and distribution in interstate commerce of radio sets, combination radio-phonograph sets, and other articles manufactured by it. The said company and its predecessor, Victor Talking Machine Company, have extensively advertised their products for many years past under their corporate names containing the word "Victor" and/or under the trade name and designation "Victor" either alone or in combination with "His Master's Voice" and other slogans, and through these means the said corporations built up and acquired a valuable goodwill in the word "Victor" as applied to their products.

Pyramid Radio Distributors, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Victor" either alone or in connection or conjunction with the word "International" or with any other word or words or in any way as a trade name, brand, or designation for its said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are those products recognized and understood by the trade and purchasing public to have been manufactured by or for RCA Victor Company, Inc., or its predecessor, Victor Talking Machine Company, when such is not the fact.

Pyramid Radio Distributors, Inc., also agreed that should it ever resume or indulge in any of the practices in question, this said stipu-

lation of the facts may be used in evidence against it in the trial of the complaint with the Commission may issue. (Aug. 10, 1934.)

1201. **Simulation—Knitted Ladies' Wear.**—Van Raalte Co., a corporation, engaged in the manufacture of knitted products for ladies' wear and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Van Raalte Co., in soliciting the sale, and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Triquette" or of any other word simulating the word "Tricot" so as to confuse, mislead, or deceive purchasers into the belief that said product is that product accepted and understood by the trade and purchasing public to be a fabric made of the "Tricot" weave or stitch on a flat warp or knitting frame, when such is not the fact.

Van Raalte Co. 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. (Aug. 11, 1934.)

1202. **False and Misleading Trade Name, Brands or Labels and Advertising—Shoes.**—Louis Bernstein, an individual, trading under the name and style of Bernstein Shoe Co., engaged as a wholesaler in the sale and distribution 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.

Louis Bernstein, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words as a trade brand, name, or designation for his products, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Louis Bernstein 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. (Aug. 11, 1934.)

1203. False and Misleading Advertising—Vermin Exterminator.—Murray R. Director, an individual, trading under the name and style of Murray Director Co., engaged in the manufacture of a vermin exterminator, and in the sale and distribution thereof, under the trade name of "Murdirat", 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.

Murray R. Director, in soliciting the sale of and selling his product in interstate commerce, hereby agreed to cease and desist from the use of the words "Absolutely harmless to human beings, domestic animals, and poultry" in his advertisements and advertising matter distributed in interstate commerce; and from the use of any other similar or equivalent words or phrases of similar import, which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said product is harmless to human beings and to domestic animals or poultry.

Murray R. Director 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. (Aug. 11, 1934.)

1204. False and Misleading Trade Name and Brands or Labels—Shoes.—Municipal Shoe Co., Inc., a corporation, engaged in the manufacture of shoes and in the sale and distribution of same to jobbers and wholesalers 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.

Municipal Shoe Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." or in connection or conjunction with a name or with any word or words or in any way as a trade name, brand, or designation for its products or for the products of others which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services; when such is not the fact.

Municipal Shoe Co., 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. (Aug. 13, 1934.)

1205. **False and Misleading Brands or Labels—Hosiery.**—The Robbins Knitting Co., a corporation engaged in the manufacture of hosiery 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.

The Robbins Knitting Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words: "Pure Silk Thread Reinforced with Art Silk" as a brand or label for its products or as representative or descriptive of any product not composed of silk; and to cease and desist from the use of the word "Silk", either independently or in connection or conjunction with the word "Art" or any other word or words, or in any way as descriptive of its products, so as to import or imply that the same is composed of silk, when such is not the fact. If the said hosiery is composed in substantial part of silk and the word "Silk" is used as descriptive thereof, then the word "Silk" shall be immediately accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "Silk" is printed, so as clearly to indicate that said hosiery is not composed wholly of silk, and which will otherwise clearly indicate that the same is composed in part of a material or materials other than silk.

The Robbins Knitting Co. 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. (Aug. 24, 1934.)

1206. **False and Misleading Brands or Labels—Hosiery.**—Shuford Hosiery Mills, a corporation, engaged in the manufacture of hosiery and in the sale and distribution of same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Shuford Hosiery Mills, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the words "Pure Thread Silk Reinforced with Rayon" as a brand or label for said product or as representative or descriptive of a product not composed in substantial part of silk. The said corporation also agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with the word "Art" or with the words "Pure Thread" or with any other word or words or in any way as descriptive of its product so as to import or imply

or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is composed wholly of silk, unless when said product is composed in substantial part of silk and the word "silk" is used as descriptive thereof, in which case the word "silk" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to indicate clearly that said product is not composed wholly of silk and which will otherwise properly and accurately represent, define, and describe said product so as to indicate clearly that the same is composed in part of a material or materials other than silk.

Shuford Hosiery Mills 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. (Aug. 24, 1934.)

1207. False and Misleading Trade Names and Advertising—Dental Supplies.—A. Alfred Haymes and Herman L. Mann, copartners, trading under the name and style of Kromel Laboratories, engaged in the manufacture of mechanical work and dental supplies for use by dentists and dental laboratories, and in the sale and distribution of said products in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

A. Alfred Haymes and Herman L. Mann hereby agreed, and each for himself agreed, in advertising and selling their products in interstate commerce, to cease and desist from the use of the word "Platinum", "Platinel" or "Platinized platinum", as a trade name or designation for any product not containing platinum in substantial quantities; and from the use of the word "platinum", "platinel" and/or "platinized platinum" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so designated, described, and represented are composed in substantial part of platinum, when such is not the fact.

A. Alfred Haymes and Herman L. Mann 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. (Aug. 24, 1934.)

1208. False and Misleading Trade or Corporate Name, Brands or Labels and Advertising—Shoes.—B. Rosenberg & Sons, a corporation, engaged as a wholesaler in the sale and distribution of shoes 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.

B. Rosenberg & Sons, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products, or for the products of others, or in advertising said products or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact. The said corporation also agreed to cease and desist from the use on its letterheads, order blanks, or other printed matter distributed in interstate commerce of the word "manufacturers" either independently or in connection or conjunction with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation makes or manufactures the products which it sells or that it owns, operates, and controls the plant or factory in which are made or manufactured the products sold by it in interstate commerce.

B. Rosenberg & Sons 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. (Aug. 24, 1934.)

1209. **False and Misleading Advertisements—Window Sign Letters.**—E. D. Moore, an individual trading under the name and style of Atlas Sign Works, engaged in a mail-order business selling and distributing window sign letters in interstate commerce, and in competition with other individuals, partnerships, 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.

E. D. Moore, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use in his advertisements and advertising matter of the word "Gold" either alone or in connection or conjunction with the words "metal" or "leaf" or with any other word or words or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or composed of gold in whole or in part, when

such is not the fact. The said E. D. Moore also agreed to cease and desist (a) from the use of statements and representations to the effect that said products are or have been at any time used on U. S. Mail trucks or American Express trucks, when such is not the fact; (b) from the use of statements or representations purporting to be testimonials of customers or users of said products, when such statements or representations are false, fictitious, and/or are not written by said customers or users of said products; (c) from the use of pictorial representations or photographs purporting to portray offices, rooms, or parts of the plant or factory used by the said E. D. Moore in the conduct of his business or in the making of his said products, when such is not the fact; (d) from stating or representing that the Postal authorities of the United States Government had investigated his literature and found or declared the statements or testimonials therein contained to be authentic, unsolicited, and voluntary, when such is not the fact.

E. D. Moore 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. (Sept. 5, 1934.)

1210. **False and Misleading Trade Name and Brands or Labels—Shoes.**—Cortlandt Godwin, F. W. Krawell, and Charles J. Hough, copartners trading under the firm name and style of Powell and Campbell, engaged as wholesalers in the sale and distribution in interstate commerce of shoes, 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.

Cortlandt Godwin, F. W. Krawell, and Charles J. Hough, in soliciting the sale of and selling their product in interstate commerce, hereby agreed, and each for himself agreed, to cease and desist from the use of the word "Doctor" or the abbreviation "Dr." in connection or conjunction with a name or with any other word or words, or in any way as a trade brand, name, or designation for their products, or in advertising said products, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so labeled, branded, designated, or described or represented are made in accordance with the design and/or under the supervision of a doctor or doctors and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Cortlandt Godwin, F. W. Krawell, and Charles J. Hough 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. 5, 1934.)

1211. False and Misleading Advertising—Radio Sets.—McMurdo Silver, Inc., a corporation, engaged in the construction of custom-built all-wave radio receiving sets, 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 method of competition as set forth therein.

For domestic radio transmission, the so-called "long-wave" or "broadcast" band is used, while foreign transmission is based almost entirely on the use of the so-called "short-wave" band. The object to be achieved in an "all-wave" receiving set is to make it possible for the operator to receive through a single instrument either the domestic or broadcast bands, or the foreign short-wave bands, at his pleasure. In the present state of the art, the reception of foreign short-wave bands is difficult and uncertain. Operators in certain localities obtain foreign stations at certain times of the year and during certain parts of the day, without difficulty and in satisfactory volume; while in other localities, such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short-wave foreign station is always slow and difficult. The loud-speaker volume varies from nothing to occasional satisfactory reception, and much attempted short-wave reception is rendered more difficult by noise interference or "static." These conditions are known to experts, but not to the purchasing public who are not aware that there are no receiving instruments which will give easily tuned, continuous, and satisfactory reception of short-waves from foreign countries under all conditions.

McMurdo Silver, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from advertising, stating, and representing, or implying, directly or indirectly that by the use of its receiving sets the owners thereof could have world-wide, continuous reception of short-wave transmissions, with loud-speaker volume, as dependably and as easily "tuned in" (or "logged") as with long-wave or broadcast transmissions; and/or from stating, representing, or presenting the merits and advantages of its products in such a way as to cover up or conceal the difficulties and deficiencies of the same, inherent in the present state of the art but unknown to the purchasing public.

McMurdo Silver, 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. (Sept. 5, 1934.)

1212. **False and Misleading Advertising—Men's Suits and Raincoats.**—John H. Daniel, an individual trading as John H. Daniel Co., engaged in the sale and distribution of men's suits and raincoats 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:

John H. Daniel, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from representing through agents, salesmen, employees, or by means of printed or advertising matter distributed in interstate commerce or by any other means that the suits offered for sale and/or sold and distributed by him are tailored or made to measure or order, when such is not the fact. The said John H. Daniel also agreed to cease and desist from the use on his letterheads, order blanks, or other printed matter distributed in interstate commerce of the word "factory" or the statements "Covering the United States with 'John D.' Tailored Clothes", "Tailored into our new 1934 models by our trained, trusty tailors", "We make garments" or of any other statements or words of equivalent meaning, or with a pictorial representation of a factory building used either independently or with any other word or words so as to have the capacity or tendency to confuse, mislead, and deceive purchasers into the belief that the said John H. Daniel makes the suits which he sells or that he owns, operates, and controls the plant or factory, or that the pictorial representation is that of his factory building, wherein are made or manufactured the suits sold by him, when such is not the fact.

John H. Daniel 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. (Sept. 12, 1934.)

1213. **False and Misleading Advertising—General Merchandise.**—Sears Roebuck and Co., a corporation engaged in the sale and distribution in interstate commerce, by means of mail-order catalogues and otherwise, of general merchandise; 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:

Sears, Roebuck and Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "All Wool" in its advertisements or advertising matter or otherwise to describe, designate, or represent products not composed wholly of wool; and from the use of the words "Wool" and/or "All Wool" in any way which may have the capacity or

tendency to confuse, mislead, or deceive purchasers in any material way in respect to the wool content of its products.

Sears, Roebuck and Co. 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. (Sept. 12, 1934.)

1214. **False and Misleading Trade Name, Prices, and Advertising—Business Correspondence Courses.**—E. F. Agee and J. E. Cherry, copartners trading under the firm name and style of Commercial Extension University, engaged in conducting a school for the teaching by correspondence of certain commercial courses, including a secretarial course consisting of lessons in shorthand, typewriting, business English, and business correspondence, and business administration consisting of bookkeeping, typewriting, business English, and correspondence and in the sale and distribution of said courses of instruction 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.

E. F. Agee and J. E. Cherry, in soliciting the sale of and selling their courses of instruction in interstate commerce, hereby agreed to cease and desist from the use of the word "University" either alone or together with the word "Extension" as part of or in connection or conjunction with their trade or firm name, and from the use of the said name, containing the word "University", or the words "Extension University" in their 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 students or prospective students into the belief that the said copartners are conducting or that the said Commercial Extension University is an educational institution or a university extension organized for teaching and study in the higher branches of learning, and in which the education imparted is universal, embracing many branches such as the arts, sciences, and all manner of learning and possessing power to confer degrees which indicate proficiency in the branches taught. The said copartners also agreed to cease and desist from the use of the word "University" and the words "Extension University" in any way soliciting the sale of and selling their courses of instruction in interstate commerce which may have the capacity or tendency to mislead or deceive the public into the belief that the said copartners conduct or that the said Commercial Extension University is an educational institution such as the terms "University" and "Extension University" are commonly understood and generally accepted to mean by the public. The said copartners also agreed to cease and desist from representing, through their

salesmen or in any other manner whatsoever, that their courses of instruction are given free or are to be given free to a student or prospective student for advertising purposes, or that a certain student due to scholastic standing or otherwise has been selected for advertising purposes to receive a course of instruction free when such is not the fact. The said copartners also agreed to cease and desist from representing in any way that they give free tuition and charge only for materials used in the courses of instruction; when in truth and in fact the price alleged to be for such materials is sufficient to cover, and does cover, both the cost of said material and the tuition and/or is the regular and customary sum asked or charged by the said copartners in the usual course of business of all students who can be induced to sign said enrollment blanks or agreements.

E. F. Agee and J. E. Cherry 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. 14, 1934.)

1215. **False and Misleading Advertising Military Uniforms and Accessories.**—Emanuel Schwartz, Samuel Schwartz, and Joseph W. Rubens, copartners trading under the firm name and style of Chicago Military Stores, engaged in the mail-order business, selling and distributing military uniforms, insignia, and accessories 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.

Emanuel Schwartz, Samuel Schwartz, and Joseph W. Rubens, in soliciting the sale of and selling their merchandise in interstate commerce, hereby agreed to cease and desist from the use in their catalogues of statements or representations to the effect that certain of said articles of merchandise will not tarnish and/or are guaranteed against tarnishing 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 articles of merchandise are proof against tarnishing and/or will not lose lustre or become dull, when such is not the fact. Said copartners also agreed to cease and desist from the use in their catalogues of the word "manufacturers" in any way 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 copartners make or manufacture the articles of merchandise which they sell and/or that they own, operate, and control the plant or factory wherein are made or manufactured the products sold by them. Said copartners further agreed to cease and

desist from stating or representing in said catalogues that articles of merchandise sold by them are made by their own designers and tailors, when such is not the fact.

Emanuel Schwartz, Samuel Schwartz, and Joseph W. Rubens 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. 14, 1934.)

1216. **Using Lottery Scheme in Merchandising—Confectionery.**—The Sweets Company of America, Inc., a corporation, engaged in the manufacture of confectionery and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, individuals, 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.

The Sweets Company of America, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves the use of any gift enterprise, lottery, or any scheme of chance, whereby an article is given as a prize or premium for or in consideration of the purchase of any other article.

The Sweets Company of America, 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. (Sept. 17, 1934.)

1217. **False and Misleading Advertising—Radio Active Product.**—Radiwoll Importers, Inc., a corporation, engaged in the business of obtaining from a certain manufacturer in Sweden, packs or bags alleged to contain radio-active elements of therapeutic value in the alleviation, cure, and treatment of diseases of a chronic nature, such as rheumatism, sciatica, arthritis, and similar afflictions, and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Radiwoll Importers, Inc., in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from the use in its advertising matter, or in any other way, or statements and representations to the effect that the use of said product, due to its alleged radium content and resultant radio-activity, will restore health in all cases and/or has relieved or cured all that have

used said product; other statements or representations of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product has medicinal or therapeutic value in excess of what is actually the fact. Said Radiwoll Importers, Inc., also agreed to cease and desist from the use of the statement "The analysis and test made by the Bureau of Standards definitely indicated Radiwoll to be radioactive" or of other similar statements so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said Government agency has found or pronounced the said product to be substantially radioactive or that its radio-activity is such as renders said product of medicinal or therapeutic value. Said Radiwoll Importers, Inc., further agreed to cease and desist from the use of such statements as "Prepared under the supervision of the Swedish Government Geologist, Dr. Herman Hedstrom, and provided with his certification of its radio-activity", or of any other similar statement representing said Dr. Herman Hedstrom as and to be a Swedish Government geologist and which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said Dr. Herman Hedstrom is a geologist now in the employ of the Swedish Government, or that the product designated Radiwoll is manufactured under the auspices of the Swedish Government or that the said product has been officially certified by the said Swedish Government.

Radiwoll Importers, 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. (Sept. 19, 1934.)

1218. False and Misleading Advertising—Dental Plates.—The American Hecolite Denture Corporation, a corporation, engaged in the business of manufacturing dental plates for false teeth and in the sale and distribution of said products under the trade designation "Hecolite" 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.

The American Hecolite Denture Corporation, in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from the use in its advertisements and advertising matter of the phrase "Such a material is Hecolite—made in America by American workmen to American standards" or of any other phrase of equivalent meaning so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive pur-

chasers into the belief that the basic materials from which said product is made or manufactured is of domestic origin, when such is not the fact.

The American Hecolite Denture Corporation 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. (Sept. 19, 1934.)

1219. **False and Misleading Advertising—Military Uniforms and Accessories.**—Bailey's Inc., a corporation, engaged in the sale and distribution in interstate commerce of military uniforms, insignia, and accessories, partly at retail but in substantial part by means of mail orders, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Bailey's, Inc., in soliciting the sale of and selling its said products in interstate commerce, hereby agreed to cease and desist from the use in its catalogues and price lists, or other advertisements or advertising matter circulated in interstate commerce, of the following statements or representations: that its said products will not tarnish, when such is not the fact; that its said products are made of solid metal, when such is not the fact; that it is a manufacturer and/or that the products advertised, sold, and distributed by it in interstate commerce are made or manufactured by it, when such is not the fact; that it is an importer and/or that any of its products are made of imported cloth, when such is not the fact; and/or that any of its said products are made of Kersey or other cloth of high quality, when such is not the fact. The said Bailey's, Inc., further agreed to cease and desist from making said statements or representations in advertisements or advertising matter circulated in interstate commerce, or in any way which may have the tendency to confuse, mislead, or deceive purchasers in any material way in reference to its said products.

Bailey's, 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. (Sept. 19, 1934.)

1220. **Using Lottery Scheme in Merchandising—Confectionery.**—Ambrosia Chocolate Co., a corporation, engaged in the manufacture of confectionery and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Ambrosia Chocolate Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article.

Ambrosia Chocolate Co. 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. (Sept. 19, 1934.)

1221. False and Misleading Trade Name, Brands or Labels and Advertising—Flavoring Extracts, Spices and Other Household Supplies.—Ben Berg and Sol Nathan, copartners, trading under the names and styles of Berg and Nathan, B. and N. Sales, B. and N. Sales Company, Best Ever Laboratories, and Best Ever Spice Mills, engaged in the sale of flavoring extracts, spices, kitchen equipment, polishes, and other household supplies in interstate commerce and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Ben Berg and Sol Nathan, in soliciting the sale of and selling their products in interstate commerce, hereby agreed, and each for himself agreed, to cease and desist from the use of the words "Laboratories" and "Mills" as part of the trade names used in the conduct of their business and/or in advertisements or advertising matter, and/or on labels affixed to the packages in which their products are packed; and from the use of the word "Laboratories" and "Mills" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that they own, control, or operate a laboratory or mill wherein their products, or any thereof, are compounded or manufactured, when such is not the fact. The said Ben Berg and Sol Nathan further agreed to cease and desist from the use of the word "Extract" in advertisements and advertising matter circulated in interstate commerce, either independently or in connection or conjunction with the words "Vanilla", "Almond", "Maple", "Walnut", "Black Walnut", "Strawberry", "Banana", "Peach", or "Orange" as descriptive of their said products in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said products are extracts and/or products in concentrated form composed or made of the materials named, when such is not the fact.

Ben Berg and Sol Nathan 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. 21, 1934.)

1222. **False and Misleading Trade or Corporate Name and Advertising—Law Correspondence Course.**—American Extension University, a corporation engaged in the business of conducting by correspondence a home study course in law, and in the sale and distribution of its courses of instruction in law in interstate commerce, and in competition with other corporations, firms, individuals, 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.

American Extension University, in soliciting the sale of and selling its courses of instruction in interstate commerce hereby agreed to cease and desist from the use of the word "University" either alone or together with the word "Extension" as part of or in connection or conjunction with its corporate or trade name and from the use of the said corporation or trade name containing the word "University" or the words "Extension University" in its catalogues, enrollment applications, 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 confuse, mislead, or deceive purchasers into the belief that the said corporation is an educational institution or university extension organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches such as the arts, sciences, and all manner of learning and possessing power to confer degrees which indicate proficiency in the branches taught and from the use of the word "University" and the words "Extension University" in soliciting the sale of and selling its courses of instruction in interstate commerce, which may have the capacity or tendency to mislead and deceive the public into the belief that the said corporation conducts or that the said American Extension University is an educational institution such as the terms "University" and "Extension University" are commonly understood and generally accepted to mean by the public.

American Extension University 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. (Sept. 24, 1934.)

1223. **False and Misleading Advertising—Hosiery.**—Elliott Knitting Mills, Inc., a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce and in competition with other corporations, individuals, firms, and partner-

ships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Elliott Knitting Mills, Inc., in soliciting the sale of and selling its hosiery in interstate commerce, hereby agreed to cease and desist from the use of the words "Pure Thread Silk Reinforced with Rayon" as descriptive of its hosiery so as to import or imply or which may tend to mislead or deceive purchasers into the belief that said hosiery is composed in substantial quantity of silk, when such is not the fact; and from the use of the words "Rayon Reinforced with Silk" so as to tend to mislead or deceive purchasers into the belief that the silk content of said hosiery is of substantial quantity, when such is not the fact.

Elliott Knitting Mills, 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. (Sept. 24, 1934.)

1224. False and Misleading Advertising—Poultry Remedy.—Ross Salmon, an individual trading under the name and style of "Wholesale Poultry Supply Company", engaged in the sale and distribution in interstate commerce of a product designated "Dosis" allegedly designed as a treatment for certain poultry diseases, such as Coccidiosis and Range Paralysis, 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.

Ross Salmon, in soliciting the sale of and selling his product in interstate commerce, hereby agreed to cease and desist from the use in his advertising matter of whatever character, or in any way, of any and all statements and representations so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is an effective means to stop or prevent or to help prevent Coccidiosis and Range Paralysis in poultry. The said individual also agrees to cease and desist from the use of any and all statements or representations concerning the medicinal properties or value of said product which are in excess of what can be accomplished by the use of said product, and from the use of any and all statements and representations which do not truthfully represent and describe the product offered by him for sale, or the results which can be obtained from the use of said product.

Ross Salmon 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 it in the trial of the complaint which the Commission may issue. (Oct. 3, 1934.)

1225. False and Misleading Brands or Labels and Advertising—Shingles.—Fred A. England Lumber Co., a corporation, engaged in the sale of lumber and shingles, at wholesale, and in the distribution of said products in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Fred A. England Lumber Co., in soliciting the sale of and selling its product in interstate commerce hereby agreed to cease and desist from the use of the words "Extra Clear" as a brand, mark, or designation for its shingles, 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.

Fred A. England Lumber Co. 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. (Oct. 3, 1934.)

1226. False and Misleading Advertising—Booklet.—Raymond Francis Yates, an individual trading under that name, engaged in the sale and distribution of a pamphlet or booklet entitled "How to Protect Inventions Without Patents" in interstate commerce, and in competition with other individuals, firms, corporations, 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.

Raymond Francis Yates, in soliciting the sale of and selling his said pamphlets or booklets in interstate commerce, hereby agreed to cease and desist from the use in any way of statements or representations which may have the capacity or tendency to confuse, mislead, or deceive inventors or prospective inventors into the belief that an invention can be "protected" in the ordinary and commonly accepted sense and meaning of that word by means of any of the aforesaid methods and/or except by obtaining a patent thereon. The said Raymond Francis Yates also agreed to cease and desist from the use in his advertisements or advertising matter of statements or representations to the effect that "20,000 manufacturers are combing the country for new ideas" or that "30,000 inventors had come to him for assistance"; when in truth such are not the facts.

Raymond Francis Yates 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. (Oct. 3, 1934.)

1227. False and Misleading Brands or Labels—Shirts.—Irving Fiedler and Milton M. Rothschild, copartners trading as Famous Shirt Company, engaged in the manufacture of men's shirts, 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.

The term "Sanfordized" as used by the textile trade refers to a patented process having for its object the pre-shrinking of the cloth out of which shirts and other garments are made; and it is generally understood by the trade, and has been widely advertised and represented to the purchasing public, that the same denotes that the cloth out of which garments so designated are made has been pre-shrunk.

Irving Fiedler and Milton M. Rothschild, in soliciting the sale of and selling their products in interstate commerce, hereby agreed and each for himself agreed, to cease and desist from marking, labeling, designating or representing any of their products as "Broadcloth", when said products are not made from that cloth known to the trade and the purchasing public as broadcloth; marking, labeling, designating or representing any of their products with the figures "2×2", when the fabric in the cloth of which the same is made does not run two threads in the warp and two in the filling; and the use of the words "Sanfordized" or "Pre-shrunk", or either of them, to describe or designate products made of cloth which has not been treated by the process known as "Sanfordizing", and has not been pre-shrunk as that term is understood by the trade and the purchasing public.

Irving Fiedler and Milton M. Rothschild 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. (Oct. 5, 1934.)

1228. False and Misleading Advertising — Correspondence School Courses.—American University of Commerce, a corporation, engaged in the business of conducting a correspondence school and selling and distributing home-study or correspondence school courses, consisting of books, pamphlets, printed and written lessons, in interstate commerce, and in competition with other corporations, firms, individuals, 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.

American University of Commerce, in soliciting the sale of and selling its courses of instruction in interstate commerce, hereby agreed to cease and desist from the use of the word "University", either

alone or in connection or conjunction with any other word or words, as part of or in connection with its corporate or trade name; and from the use of the word "University" in its advertisements or advertising matter circulated in interstate commerce, in any way which may confuse, mislead, or deceive purchasers into the belief that said American University of Commerce is conducting a university, or that its said school is a university or institution organized for study and teaching in the higher branches of learning, or that it is empowered to confer degrees in special departments such as law, medicine, theology, and the arts, when such is not the fact.

American University of Commerce 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. (Oct. 10, 1934.)

1229. False and Misleading Trade Name and Brands or Labels—Soaps.—Procter and Gamble Co., a corporation, engaged in the manufacture of soaps, 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.

Procter and Gamble Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "olive" and/or "olive oil" either independently or in connection or conjunction with any other word or words as part of its trade name or brand for its products or any part thereof, so as to import or imply that said product or products are composed one hundred percent of olive oil, when such is not the fact; if in the event a product is composed in substantial part of olive oil and the word "olive" or "olive oil" is used to designate said product, then in such event the word "olive" or "olive oil" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "olive" or "olive oil" is printed so as to indicate clearly that the said product is not composed wholly of olive oil and that will otherwise properly and accurately describe said product.

Procter and Gamble Co. 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. (Oct. 17, 1934.)

1230. False and Misleading Brands or Labels—"Shamy."—Abram Cashinsky, an individual trading as Economic Shamy Co., engaged in the sale and distribution of fabrics under the trade designation "Shamy" 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.

Abram Cashinsky, in soliciting the sale of and selling his product in interstate commerce, hereby agreed to cease and desist from the use of the trade designation "Shamy" or other phonetic spelling of the word "Chamois" either independently or in connection or conjunction with any other word or words on his labels affixed to said product or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is that product known to the trade and purchasing public as "Chamois", a leather prepared from the skin of the antelope of that name or from the skin of the sheep, goat, or calf. The said Abram Cashinsky also agreed to cease and desist from the use on his said labels or other printed matter of the words "manufactured by" 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 Abram Cashinsky makes or manufactures said product and/or that he owns, operates, and controls the plant or factory wherein the said product is made or manufactured, when such is not the fact.

Abram Cashinsky 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. (Oct. 22, 1934.)

1231. False and Misleading Brands or Labels—Shingles.—B. F. Finke, an individual trading as the Blue Ribbon Shingle Co., engaged in the manufacture of red cedar shingles and in the sale and distribution of 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.

B. F. Finke, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the words "Extra Clear" as a brand, mark, or designation for his products; 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 his products, or any of them.

B. F. Finke 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. (Oct. 22, 1934.)

1232. False and Misleading Trade Name, Brands or Labels and Advertising—Mirrors.—Emerson Glass Corporation, engaged in the manufacture of mirrors backed with a product, consisting of a

mixture of some metal or metals suspended in shellac, and in the sale and distribution of same in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

For a number of years last past, a method or process has been used in the manufacture of mirrors consisting of covering the silver on the backs of the mirrors with a continuous sheath or layer of copper which is applied by the electrolytic process, and such mirrors so backed with copper by the electrolytic process, have come to be and are well and favorably known by the trade and purchasing public as copper-backed mirrors and for their alleged superiority over mirrors not so backed in resisting the action of atmospheric and climatic conditions.

Emerson Glass Corporation, in soliciting the sale of and selling its mirrors in interstate commerce, hereby agreed to cease and desist from the use of the trade name or designation "Copperlytic Mirrors" either alone or in connection or conjunction with any other word or words in its advertisements or on its labels affixed to said mirrors 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 silver on the backs of said mirrors is covered with a sheath or layer of copper and/or that said metal layer has been applied by the electrolytic process. Said corporation also agreed, in soliciting the sale of and selling its said mirror backing product or in licensing others to use and sell the same, to cease and desist from the use of the word "copper" either independently or in connection or conjunction with the suffix or letters "lytic" or with any other letter or letters or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers of mirrors from said corporation or its licensees into the belief that said mirror backing product used in the manufacture of the mirrors is composed of copper in whole or in part and/or that said backing product, when and as applied to the silvered backs of the mirrors, is applied thereto by an electrolytic process, when such is not the fact.

Emerson Glass Corporation 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. (Oct. 22, 1934.)

1233. False and Misleading Advertising—Commercial and Social Announcements.—Spencer Paper Co., Inc., a corporation, engaged in the business of printing a general line of commercial and social announcements and in the sale and distribution of same in interstate

commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Spencer Paper Co., Inc., in soliciting the sale of and selling its product in interstate commerce, hereby agreed, to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "Engraved" either independently or in connection or conjunction with the word "Plateless" or with any other word or words or in any other way as descriptive of its products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are the result of impressions made from inked engraved plates commonly known to the trade and purchasing public as "Engraving" and/or "Embossing."

Spencer Paper Co., 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. (Oct. 22, 1934.)

1234. False and Misleading Brands or Labels and Advertising—Sponges and Chamois Skins.—John D. Hanson, an individual, engaged as a jobber in the sale and distribution of sponges and chamois skins 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.

John D. Hanson, in advertising, marking, branding, selling, and distributing his products in interstate commerce, hereby agreed to cease and desist from the use of the words "French dressed", either independently or in connection or conjunction with any other word or words, to describe or designate products not imported from France; and from the use of the words "French dressed" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such products are imported, when such is not the fact.

John D. Hanson 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. (Oct. 22, 1934.)

1235. False and Misleading Trade Name, Brands or Labels, and Advertising—Tooth Paste.—Frank DeLugach, an individual trading under the name and style of Dee's Manufacturing Co., engaged in the sale and distribution of tooth paste 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.

Frank DeLugach, in soliciting the sale of and selling his product in interstate commerce, hereby agreed to cease and desist from the use in his advertising matter or on his labels affixed to said product of the word "Lemon" or of the pictorial representations of lemons either alone or in connection or conjunction each with the other, 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 said product is composed of lemon either in whole or in part and/or that the said product contains either the juice or the oil of the lemon in substantial quantity, when such is not the fact. The said Frank DeLugach also agreed, in soliciting the sale of and selling his product, to cease and desist from the use of the word "Manufacturing" as part of or in connection or conjunction with his trade name, so as to import or imply or which may tend to mislead or deceive purchasers into the belief that the said Frank DeLugach makes or manufactures the product sold by him and/or that he owns, operates, and controls the plant or factory wherein said product is made or manufactured.

Frank DeLugach 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. (Nov. 1, 1934.)

1236. False and Misleading Advertising—Chemical Compound.—Stero-Tex Fabrics, Inc., a corporation, owns and controls the process of applying a chemical compound, known as "Stero-Tex", to fabrics, and issues licenses to various concerns engaged in the manufacture and sale of hat linings, whereby, in consideration of the payment of a royalty and of the purchase of said chemical and of labels from the licensor, the licensees are granted the privilege of using said chemical compound according to the Stero-Tex Fabrics company's process. Stero-Tex Fabrics, Inc., also advertised its said product, "Stero-Tex", and the products treated by its process by means of advertisements inserted in newspapers having a wide interstate circulation and by radio broadcasts through a station having a wide interstate hook-up, 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.

Stero-Tex Fabrics, Inc., in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from stating, asserting, or representing in advertisements or adver-

tising matter, in correspondence, radio broadcasts, or by any other means, that the treatment of fabrics with its chemical compound "Stero-Tex" sterilizes such fabrics, renders them resistant to bacteria, germ-proof, germ-killing, germ-inhibiting or antiseptic; that when used as hat linings, such fabrics have a tendency or effect to inhibit or prevent the transmission of scalp infections or skin diseases, or to protect the users against dandruff, eczema, scrofula, or other contagions; or that fabrics so treated have germicidal properties and that it is impossible for germs to live or grow in contact with them; and from the use of any other or similar statements or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers in respect of the alleged germicidal or bacteria-killing properties of such fabrics.

Stero-Tex Fabrics, 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. (Nov. 1, 1934.)

1237. False and Misleading Prices and Advertising—Raincoats and Sport Garments.—King Outfitters, Inc., a corporation, engaged in the sale and distribution of raincoats and sport garments 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.

King Outfitters, Inc., in soliciting the sale of and selling its products in interstate commerce hereby agreed to cease and desist from the use of the words "From maker to wearer" and/or any other words or phrases importing that said King Outfitters, Inc., is the manufacturer of the products which it sells and distributes in interstate commerce, when such is not the fact; and from making any false, fictitious, or misleading statements or representations concerning the value or the prices at which its products, or any of them, are sold or contemplated to be sold in the ordinary course of business.

King Outfitters, 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. (Nov. 1, 1934.)

1238. False and Misleading Advertising—Shoes.—G. W. Astill, an individual trading under the name and style of G. W. Astill Shoe Co., engaged in the sale and distribution 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.

G. W. Astill, in soliciting the sale of and selling his shoes in interstate commerce, hereby agreed to cease and desist from the use in his advertising matter or in any other way of any statement, representation, or guarantee so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive customers into the belief that in the event such customers are not satisfied with their purchases, the amount of money they have paid will be immediately refunded upon return of the purchased products unworn, when such is not the fact.

G. W. Astill 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. (Nov. 7, 1934.)

1239. False and Misleading Brands or Labels—Talcum Powder.—Dermay Perfumers, Inc., a corporation, which owns and operates, as a subsidiary, Arbor Laboratories, Inc., a corporation, and is engaged in the manufacture of talcum powder and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Dermay Perfumers, Inc., and Arbor Laboratories, Inc., in soliciting the sale of and selling their talcum powders in interstate commerce, hereby jointly and severally agreed to cease and desist from the use on labels affixed to their packaged products sold in interstate commerce of the word "Paris", either alone or in connection or conjunction with any other word or words, or in any way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said corporations, or either of them, have or has a place of business at Paris, France, or which may tend to mislead or deceive purchasers into the belief that said talcum powder is of French origin and/or imported into the United States, when such is not the fact.

Dermay Perfumers, Inc., and Arbor Laboratories, Inc., 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. (Nov. 7, 1934.)

1240. False and Misleading Advertising—Barber Shop and Beauty Parlor Equipment.—V. J. Curcio, an individual trading under the name and style of V. J. Curcio Co., engaged in the manufacture and compounding of barber shop and beauty parlor equipment and supplies and in the sale and distribution of such 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.

V. J. Curcio, in offering for sale and selling in interstate commerce, hereby agreed to cease and desist from the use of any word or words implying that he is the manufacturer of the machines which he sells and distributes in interstate commerce; and from the use of the words "Manufactured by", or any other words of similar import, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products referred to are manufactured by him, when such is not the fact.

V. J. Curcio 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. (Nov. 7, 1934.)

1241. **False and Misleading Brands or Labels—Cigars.**—La Vendor Cigar Co., a corporation engaged in the manufacture of cigars and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

La Vendor Cigar Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words "Tampa, Fla.", either alone or in connection or conjunction with any other word or words, or in any other way, on its brands or labels affixed to said products so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are made or manufactured in the district of Tampa, Florida, when such is not the fact.

La Vendor Cigar Co. 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. (Nov. 7, 1934.)

1242. **False and Misleading Trade Name and Advertising—Watch Repairing.**—Idel Glick, an individual formerly trading under the name and style of "Glick's Watch Factory" but at present doing business as "Glick's," engaged in the business of repairing watches sent to his place of business in the State of Michigan by retail jewelers and others in interstate commerce, and which watches after being repaired have been returned, generally through the mails, 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:

Idel Glick, hereby agreed to cease and desist from the use of the word "Factory" as part of or in connection or conjunction with his trade name or in his advertising 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 Idel Glick owns, operates, and controls the plant or factory wherein the part used by him in the repair of watches sent him in interstate commerce are made or manufactured, when such is not the fact.

Idel Glick 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. (Nov. 7, 1934.)

1243. False and Misleading Brands or Labels—Films.—R. H. Macy & Co., a corporation, engaged in the sale of general merchandise at retail, and in the distribution thereof 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:

R. H. Macy & Co. hereby agreed to cease and desist from selling or offering for sale in interstate commerce the product known as "Macy's Multi-Chrome Film" without causing the containers in which the same is packed to be plainly, distinctly, and prominently marked or branded with the words "Made in Belgium."

R. H. Macy & Co. 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. (Nov. 9, 1934.)

1244. False and Misleading Advertising—Shirts.—Plymouth Rock Shirt Corporation, a corporation, engaged in the sale and distribution in interstate commerce of men's shirts, 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.

Plymouth Rock Shirt Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on letterheads, billheads, envelopes, or other advertisements and advertising matter circulated in interstate commerce, of the word "Manufacturers" either independently or in connection or conjunction with any other word or words, and from the use of the

word "Manufacturers" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it manufactures the products which it sells and distributes in interstate commerce, when such is not the fact; the use in advertisement and advertising matter of statements and representations that it offers for sale and sells its products at wholesale prices, when such is not the fact; the use in advertisements and advertising matter, or on labels attached to its garments, of statements and representations that its said products are "shrunk" or "preshrunk" or that they suffer "No shrinkage" or any other similar words or phrases having the tendency or capacity to confuse, mislead, or deceive customers into the belief that such products have been preshrunk, when such is not the fact.

Plymouth Rock Shirt Corporation 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. (Nov. 14, 1934.)

1245. False and Misleading Advertising—Vermin Exterminator.—Lawrence Brothers, Inc., a corporation, engaged in the manufacture of a vermin exterminator 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.

Lawrence Brothers, Inc., agreed to cease and desist from statements and representations in advertisements and advertising matter distributed in interstate commerce to the effect that the use of their product "Peerless Rat Specific" for killing rats and mice eliminates offensive odors; statements and representations in such advertisements and advertising matter to the effect that said product is harmless to man or dog, cats, poultry, pigs, and other livestock; and/or the reprinting and circulation in interstate commerce of any leaflet or bulletin of the United States Department of Agriculture with its own advertisements or advertising matter comingled with or imposed thereon in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that its said product has been endorsed, recommended, or approved by the United States Department of Agriculture.

Lawrence Brothers, 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. (Nov. 14, 1934.)

1246. False and Misleading Advertising—Women's Hats.—William Tucker and Sam Goodheart, copartners, trading as Tucker & Good-

heart; T. and G. Hat Shop, Acme Hat Manufacturing Co., and Tucker and Goodheart Hat Co., engaged in the manufacture and sale of women's hats 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:

William Tucker and Sam Goodheart, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "Panama" either independently or in connection or conjunction with any other word or words in advertisements and advertising matter circulated in interstate commerce to represent or designate a product not made from the leaves of the Paja Toquilla or Jipi Japa and not fabricated in accordance with the process used in the manufacture of Panama hats; and from the use of the word "Panama" in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that the products so advertised and represented are made from the leaves of the Paja Toquilla or Jipi Japa, or are fabricated in accordance with the process used in the manufacture of Panama hats, when such is not the fact.

Respondents, William Tucker and Sam Goodheart, also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Nov. 14, 1934.)

1247. False and Misleading Advertising—Stoves and Oil Burners.—Sears, Roebuck & Co., a corporation, engaged in the sale and distribution of merchandise, including stoves and conversion oil burners 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:

Sears, Roebuck & Co. agreed to cease and desist from offering for sale and/or selling in interstate commerce, used, second-hand, and/or reconditioned or reclaimed stoves or conversion oil burners without distinctly, definitely, and clearly stating, setting out and informing customers and prospective customers that such products are used, second-hand, and/or reconditioned or reclaimed products.

Sears, Roebuck & 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. (Nov. 19, 1934.)

1248. False and Misleading Advertising—Hats.—Frederick Loeser & Co., Inc., a corporation, engaged in the sale and distribution of mer-

chandise 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.

Frederick Loeser & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Panama" either independently or in connection or conjunction with any other word or words, in advertisements and advertising matter circulated in interstate commerce to represent or designate a product not made from the leaves of the Paja Toquilla or Jipi Japa and not manufactured in accordance with the process used in the manufacture of Panama hats; and from the use of the word "Panama" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so advertised and represented are made from the leaves of the Paja Toquilla or Jipi Japa, or are fabricated in accordance with the process used in the manufacture of Panama hats, when such is not the fact.

Respondent, Frederick Loeser & Co., Inc., 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. 19, 1934.)

1249. **False and Misleading Trade Name and Advertising—Silver Plated Ware.**—Russell L. Post and Herman Ricker, copartners trading under the names and styles of National Mailing Service and Reliable Manufacturing Co., engaged in the sale by mail orders of silver plated ware and other merchandise; and in the sale through house-to-house canvassers of a variety of novelties and household specialties 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.

Russell L. Post and Herman Ricker, in soliciting the sale of and selling their products in interstate commerce, hereby agree to cease and desist from the use in advertisements and advertising matter distributed in interstate commerce of the words or legends "R. L. Post in charge of liquidation" or "Liquidation Sale", or either thereof; and from the use of any other or similar words or phrases which may import or imply that their business is in process of liquidation, or that they are conducting a liquidation sale, when such is not the fact; from the use of the word "Manufacturing" as a part of their trade name in advertising matter or advertisements distributed in interstate commerce; and from the use of said word "Manufactur-

ing" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that they own, operate, or control a factory wherein the products which they sell are manufactured or fabricated, when such is not the fact.

Russell L. Post and Herman Ricker 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. (Nov. 19, 1934.)

1250. False and Misleading Brands or Labels—Clocks and Watches.—Norman M. Morris, Inc., a corporation, engaged in the importation and assembling of parts of clocks and watches, and in the sale and distribution of said products, when assembled, 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.

Norman M. Morris, Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from branding, labeling, or representing clocks containing works imported from Germany as "Swiss" clocks; and from branding, labeling, or representing its products in any way which does not truthfully and accurately represent the facts respecting the country of their origin.

Norman M. Morris, 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. (Nov. 19, 1934.)

1251. Using Lottery Plan in Merchandising—Confectionery.—B. and G. Candy Co., Inc., a corporation, engaged in the manufacture of confectionery and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

B. and G. Candy Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of any scheme, plan, or method of sale which involved the use of any gift enterprise, lottery, or any scheme, plan, or method of sale or of promoting the sale of its candy products whereby any article is given as a prize or premium for or in consideration of the purchase of any other article.

B. and G. Candy Co., 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. (Nov. 19, 1934.)

1252. False and Misleading Advertising—Coupons and Advertising Matter.—Robert Hartman and R. L. Jacoby, copartners, 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 certain articles of merchandise, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Robert Hartman and R. L. Jacoby, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist from stating or representing, directly or indirectly, in advertisements and advertising matter or otherwise that the merchandise secured by dealers' customers is free or costs them nothing, when such is not the fact; the use of any certificate, coupon, or other device in such a way as to imply or which may have the capacity or tendency 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 merchandise at prices less than the prices usually and customarily charged for the same, when such is not the fact; stating or representing, directly or indirectly, in advertisements and advertising matter or otherwise, that the pen and pencil sets which it distributes are "lifetime" sets and are sold under a "lifetime" guaranty, when such is not the fact; the use of the word "Pearl" in their advertisements or advertising matter, or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said products are made, in whole or in part, of pearls, when such is not the fact; and stating or representing, by words or pictorial representations, or by the use of such words as "Our Home", that they own or occupy a large office building, when such is not the fact.

Robert Hartman and R. L. Jacoby 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. (Nov. 19, 1934.)

1253. False and Misleading Brands or Labels and Advertising—Shingles.—Phoenix Shingle Co., a corporation, engaged in the manufacture of red cedar shingles and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, enter into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Phoenix Shingle Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist 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.

Phoenix Shingle 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. (Nov. 19, 1934.)

1254. False and Misleading Brands or Labels—Shingles.—A. L. Dunn, an individual trading under the name and style of Dunn Lumber Co., engaged in the sale and distribution of lumber and cedar shingles at wholesale and retail 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.

A. L. Dunn, in soliciting the sale of and selling his products in interstate commerce, hereby agreed to cease and desist from the use of the words "Extra Clear" as a brand, mark, or designation for his products; and from the use of the words "Extra Clear" in any way which may have tendency or capacity to confuse, mislead, or deceive purchasers respecting the grade or quality of his products, or any of them.

A. L. Dunn 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. 19, 1934.)

1255. Disparaging Competitors' Products and False and Misleading Advertising—Oleomargarine and Butter.—Farmers Union Cooperative Produce Association, a corporation, engaged in the manufacture of butter and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Farmers Union Cooperative Produce Association, in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from representing, publishing, republishing, or distributing to its members, or to dealers, or the consuming public any false and defamatory statements, directly or indirectly pur-

porting to be descriptive of the manufacture, sale, or composition of oleomargarine; any matter or information stating directly or by implication that oleomargarine in the ordinary and usual process of being manufactured, or the cocoanut oil contained in such oleomargarine, is foul, filthy, unsanitary, or otherwise unfit for human consumption; and any direct statement or matter containing the implication that the sale of oleomargarine is a poor man's butter, or any false information concerning the cost of the materials used in the manufacture of oleomargarine.

Farmers Union Cooperative Produce Association also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Nov. 23, 1934.)

1256. False and Misleading Brands or Labels—Sweaters.—George Pauker and Morris Pauker, copartners, engaged in the sale and distribution in interstate commerce of men's and boys' sweaters; 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.

George Pauker and Morris Pauker, in soliciting the sale of and selling their products in interstate commerce, hereby agreed to cease and desist from the use of the words and figures "100% Spun Yarn" as a brand or label with which to mark any of their products not composed entirely of wool yarn; and from the use of the words and figures "100% Spun Yarn" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so marked, branded, labeled, or represented are composed wholly of wool yarn, when such is not the fact.

George Pauker and Morris Pauker also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Nov. 23, 1934.)

1257. False and Misleading Brands or Labels—Shoe and Automobile Polishes, Leather Findings and Neatsfoot Oil.—The American Polish Co., a corporation engaged as a jobber in the sale and distribution in interstate commerce of shoe and automobile polishes and leather findings, 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.

The American Polish Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist

from the use of the word "Neatsfoot" as a brand or label for said products, either independently or in connection or conjunction with any other word or words, or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the product so described and designated is composed wholly of neatsfoot oil, when such is not the fact.

The American Polish 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. (Nov. 23, 1934.)

1258. False and Misleading Advertising—Poultry Farming and Baby Chicks.—Truslow Poultry Farm, Inc., a corporation, engaged in poultry farming, including the hatching and sale of baby chicks, and in the manufacture and sale of various products for use by poultry raisers, 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.

Truslow Poultry Farm, Inc., in its advertisements and advertising matter distributed in interstate commerce or otherwise in soliciting the sale of and selling its products in interstate commerce, hereby agrees to cease and desist from the use of the statements "Toxite, the disease killer" or "Toxite Disease Controlling Spray" or of any other statement or representation 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 said product will put an end to all poultry diseases or that it is effective in the control of all diseases common to poultry or that it possesses poultry disease controlling value or qualities in excess of what is actually the fact.

Truslow Poultry Farm, Inc., 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. 26, 1934.)

1259. False and Misleading Trade or Corporate Name, and Advertising—Correspondence Courses.—Standard Extension University, a corporation, engaged in the business of conducting by correspondence, a home study course in secretarial work and another such course in accounting, selling, and distributing its said courses of instruction 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.

Standard Extension University, in soliciting the sale of and selling its courses of instruction in interstate commerce, hereby agreed to

cease and desist from the use of the word "University" either alone or together with the word "Extension" as part of or in connection or conjunction with its corporate or trade name and from the use of the said corporate and trade name containing the word "University" or the words "Extension University" in its enrollment applications, lesson papers, or other printed matter distributed in interstate commerce, so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation is an educational institution or university extension organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches such as the arts, sciences, and all manner of learning and possessing the power to confer degrees which indicate proficiency in the branches taught, and from the use of the word "University" and the words "Extension University" in any way, in soliciting the sale of and selling its courses of instruction which may have the capacity or tendency to mislead or deceive the public into the belief that the said corporation conducts or that the said Standard Extension University is an educational institution such as the terms "University" and "Extension University" are commonly understood and generally accepted to mean by the public.

Standard Extension University 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. 26, 1934.)

1260. False and Misleading Advertising—Sponges and Chamois.—American Sponge & Chamois Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce of sponges, chamois, and other related products, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

American Sponge & Chamois Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Manufacturers" on its advertisements or advertising matter circulated in interstate commerce; and from the use of the word "Manufacturers" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said American Sponge and Chamois Co., Inc., makes or manufactures the products which it sells, or that it owns, operates, or controls a plant or factory wherein said products are made or manufactured, when such is not the fact.

American Sponge & Chamois Co., Inc., 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. 26, 1934.)

1261. **False and Misleading Brands or Labels—Bread.**—Skoal Baking Co., Inc., a corporation, engaged in the baking, selling, and distributing in interstate commerce of a health bread known as “Swedish Knäckerbröd”, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth herein.

Skoal Baking Co., Inc., in soliciting the sale of and selling its product in interstate commerce, hereby agreed to cease and desist from the use of the words “Swedish Bread” and “Genuine Knäckerbröd (Scandinavian Bread)”, or either thereof, on labels affixed to the containers of said product, or in any other way so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product so designated is imported from Sweden, when such is not the fact; or unless, if the said product is of the same type of bread as is produced in Sweden or Scandinavian countries, and the words “Swedish Bread” or “Genuine Knäckerbröd (Scandinavian Bread)” shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the said words “Swedish Bread” or “Genuine Knäckerbröd (Scandinavian Bread)” are printed so as to indicate clearly that said product is of domestic origin and/or that the said words “Swedish Bread” or “Genuine Knäckerbröd (Scandinavian Bread)” refer to the type of product and not the place of origin thereof.

Skoal Baking Co., Inc., 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. 26, 1934.)

1262. **False and Misleading Advertising—Portable Oil Refiners for Automobiles.**—Climax Manufacturing Co., a corporation, engaged in the manufacture of portable oil refiners for use on automobiles and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Climax Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the words “The Climax Staff of Lubricating Engineers” or any other similar or equivalent phrase in any way

which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said Climax Manufacturing Co. has or maintains such a staff, when such is not the fact.

Climax Manufacturing 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. (Nov. 26, 1934.)

1263. False and Misleading Brands or Labels and Advertising—Jewelry.—American Jewelry Chain Co., Inc., engaged in the manufacture of jewelry and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

American Jewelry Chain Co., Inc., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Sterling" either independently or in connection or conjunction with any other words or words, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products upon which such word or words are placed are composed wholly of silver, when such is not the fact; or in case said word "Sterling" is placed upon any of its products composed in part of silver and in part of another metal or metals, then the fact that the same are not composed wholly of silver shall be made clearly to appear.

American Jewelry Chain Co., Inc., also agreed that if it ever resumes or indulges in 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. 26, 1934.)

1264. False and Misleading Brands or Labels and Advertising—Jewelry.—Aurora Jewelry Co., a corporation, engaged in the manufacture of jewelry and in the sale and distribution of same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Aurora Jewelry Co., in soliciting the sale of and selling its products in interstate commerce, hereby agreed to cease and desist from the use of the word "Sterling" 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 upon which such word or words are placed are composed wholly of sterling silver, when such is not the fact; or in case said word "Sterling" is placed upon any of

its products and said products are composed in part of silver and in part of another metal or metals, then the fact that the same are not composed wholly of silver shall be made clearly to appear.

Aurora Jewelry Co. 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. (Nov. 26, 1934.)

1265. False and Misleading Trade Name and Advertising—Golf Ball Marking Device.—Globe Tool & Engineering Co., a corporation, engaged in the manufacture of special tools and in the sale and distribution of a device for marking golf balls 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.

Globe Tool & Engineering Co., in soliciting the sale of and selling its golf ball marking devices in interstate commerce, hereby agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce, of statements and representations to the effect that the said devices are "self inking" or that the said devices "emboss" the name upon the ball or that the letters resulting from the use of the said device on the ball are filled with enamel, when such are not the facts. The said corporation also agreed, in soliciting the sale of and selling its devices in interstate commerce, to cease and desist from the use of the word "Emboss" as part of or in connection or conjunction with its trade name or in any other way which may have the capacity or tendency to mislead or deceive purchasers into the belief that the letters effected or formed by the use of the said device on the ball are of the "Embossed" or raised type, when such is not the fact.

Globe Tool & Engineering Co. 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. (Nov. 28, 1934.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

0650. Vendor-Advertiser—Eyelash Preparation.—Kurlash Co., Inc., of Buffalo, N. Y., vendor-advertiser, is engaged in selling a preparation for the treatment of eyelashes designated “Kurlene” and in advertising represented:

GROW LONG DARK LASHES WITH KURLENE

This amazing European discovery is being bought by thousands of women every day. No wonder! Letters from delighted users tell of marvelous growth of long dark silky lashes where only pale stubby lashes grew before. Have such glorious sweeping lashes yourself. Frame your eyes in long, luring lashes—your own natural lashes that thrill and excite. Start using Kurlene today.

KURLENE—THE EYELASH GROWER

For Thrilling Eyes Grow Long Lashes

Who said you can't have long dark lashes, with eyes that thrill and lure? Just try this amazing European discovery. Apply fragrant Kurlene to the lash roots at bedtime. See how quickly your lashes grow long and silky. Framed in such glorious natural lashes your eyes appear larger, darker, mysterious, winning. Thousands of delighted users advise Kurlene. At toilet counters everywhere.

KURLENE—THE EYELASH GROWER

For you * * * Eyes that attract

The glorious tempting eyes of Spanish beauties are no lovelier than your own. The difference is in their long dark lashes. Have such lashes yourself—long, sweeping lashes that arouse fiery admiration and the stirring thrill of mystery. And so easy! Just apply the amazing European discovery, Kurlene, to lash roots; watch lashes grow long, dark, silky, luxuriant—lovely natural lashes. Others are using Kurlene; don't stay behind. Ask at your toilet counter today.

Historically, this preparation is one of the oldest proprietaries in the world. Originally the formula was perfected by a few medical men of Germany to combat a serious epidemic of granulated eyelids among the inhabitants of the community where they lived and which was leaving many without a trace of eyelashes.

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, Apr. 24, 1934, to Dec. 2, 1934, inclusive. For digests of previous stipulations, see vols. 14, 15, 16, 17, and 18 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

Not only did this marvelous preparation restore the eyelashes to the suffering people in that community, but it gave relief to the sore and granulated lids as well. We came into possession of this formula through a direct line from the doctors themselves.

The most important essential to hair growth is nourishment. Its only source of nourishment is from the blood. If the blood supply to the hair roots is cut off or diminished the hair becomes impoverished and later drops out. Now the eyelashes are the most difficult of all kinds of hair on the human body to make grow and keep looking well. An eyelash lives normally only from 3 to 5 months and then falls out of its own accord. Their roots are only one-third of the depth of a normal hair on the head, because the eyelash itself is only a little thicker than tissue paper.

One of the ingredients of Kurlene stimulates the action of the blood through the little fine capillaries to the hair roots, and maintains the circulation for a considerable period of time. This stimulated circulation is what supplies the needed nourishment to the hair roots to encourage hair growth. Another ingredient possesses antiseptic properties strong enough to destroy any bacilli that might be present. The base serves as a lubricant and binder, and still another ingredient possesses unusual healing properties.

Summarizing, Kurlene contains ingredients possessing stimulating, antiseptic, lubricating, and healing properties, all necessary for creating conditions for the growth and beautifying of the eyelashes.

THE KURLASH CO., INC.

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 legitimate competitors, having the capacity and tendency to cause erroneous impressions that the use of said Kurlene 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 while this preparaton, due to its mercury content, would have a tendency to cause the lashes to become dark, the mercury acting as a dye, it would, nevertheless, have little, if any, value in causing the growth of lashes, and furthermore that it has no therapeutic value with reference to granulated lids or otherwise.

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 Kurlene will grow long eyelashes where only pale, stubby lashes grew before, or otherwise;

(b) That by the use of Kurlene one may have glorious, sweeping lashes or frame her eyes in long, luring lashes;

(c) That by the use of Kurlene one's own lashes will thrill and excite;

(d) That by the application of Kurlene to the lash roots, one's lashes will quickly grow long and silky;

(e) That by the application of Kurlene to lash roots, long, sweeping, luxuriant, and natural lashes result that arouse fiery admiration, etc.;

(f) That Kurlene is either a competent treatment or an effective remedy for granulated eyelids, or for the restoration of eyelashes lost as a result of granulated lids;

(g) That Kurlene stimulates the action of the blood at the hair roots or supplies needed nourishment to the hair roots;

(h) That Kurlene possesses either unusual antiseptic or healing properties;

and all representations of like import.

It is also stipulated and agreed that if the said Kurlash 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. (Apr. 25, 1934.)

0651. Vendor-Advertiser — Proprietary Medicine.—S. S. S. Co., of Atlanta, Ga., vendor-advertiser, is engaged in selling a proprietary medicine designated as S. S. S., and in advertising represented:

A clear skin and a strong body depend upon new strength in the blood.

If your vitality is low and you feel weak, don't care to eat, have lost weight, your skin is sallow, pale, or broken out with pimples or boils, let S. S. S. purify and enrich your blood.

A clear, smooth skin makes for more attractiveness! S. S. S.

After taking S. S. S. the pimples and blackheads disappeared and my skin became clear.

New strength in the blood clears the skin.

S. S. S. is famed for its ability to build new strength in the blood—the kind that heals so-called "skin troubles."

A lovely, clear skin is within your reach.

* * * you, too, may have a beautiful skin, rose-petal in texture, pretty as a picture without a single pimple.

You can recognize a lowered blood count by the way you look and feel—such as body weakness, lack of appetite, underweight, paleness, sallow complexion, boils, and pimples. They indicate that you need S. S. S.

S. S. S. should be your safeguard. It restores the red blood cells to normal. The system tones up, skin eruptions and sallow complexion disappear.

When you get your red blood cells back up to normal, that sluggish let-down feeling, lack of appetite, skin troubles disappear.

Your nerves become steady.

You, too, may gain new vigor—pep—a clear skin with new strength in the blood.

Don't let rheumatism make an invalid of you. S. S. S. stands ready to knock it out.

Those muscular pains commonly called rheumatism are generally due to a run-down condition with the number of red blood cells below the normal count.

S. S. S. aids the system in building up these red blood cells and in getting rid of the condition of which rheumatism is but a symptom. The body and disease-resistant, and rheumatic pains go.

Gain new vigor—a clear skin—with new strength in the blood.

Just take S. S. S. and prove it yourself. You too will enjoy your food—have firmer flesh—sleep sounder—your nerves will be calmer—your skin will clear up.

It works safely, surely, swiftly.

Heal your skin from within with this new strength.

Take S. S. S.—a splendid tonic for restoring the appetite.

The company does not admit that the foregoing statements are incorrect, exaggerated, or misleading, but rather than defend them before the Federal Trade Commission, 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 S. S. S. is a competent or effective treatment for rheumatism or conditions commonly known as rheumatism;

(b) That said S. S. S. is a competent or effective treatment for boils, with the understanding that this agreement shall not prevent the respondent from stating in advertisements that the presence of boils is often a symptom or is often indicative of a deficiency in the blood content;

(c) That said S. S. S. is a competent or effective treatment for loss of weight, sleeplessness, skin disorders, skin eruptions, sallow complexion, paleness, skin blemishes, loss of appetite, nervousness, or lack of clear skin, unless qualified by a statement to the effect that beneficial results may be expected only in cases where those ailments or conditions are due to a deficiency in the blood content, or a deficiency in hemoglobin or to what is commonly known as "low blood count" or impoverished blood; all such qualifying statements are to be made in direct connection with the major claim and in equally conspicuous type;

(d) That the physiological effect of S. S. S. is sure; and all representations and statements equivalent or similar thereto in form or substance.

This stipulation is submitted with the understanding:

That nothing herein shall prevent the respondent from stating in advertisements that its said product, S. S. S., is useful and valuable in the treatment of conditions that are amenable to treatment by an ordinary bitter tonic or stomachic, or that said product is useful and valuable in the treatment of conditions due to a deficiency in the blood count or to impoverished blood; and

It is understood that, at the time this stipulation is signed the respondent is engaged in scientific experiments which it proposes to continue for the purpose of determining whether as to some of the advertising claims from which the respondent agrees herein to desist, broader representations may be truthfully made; and it is not the intention of this stipulation to prejudice the rights of either party in the event the respondent as the result of competent scientific experiment or competent medical opinion undertakes to enlarge its advertising claims accordingly; but before publishing any such advertisements the respondent shall first submit its proposed claims in this respect to the Commission 90 days in advance of publication. (Apr. 27, 1934.)

0652. **Publisher—Feminine Hygiene Preparation.**—Fawcett Publications, Inc., of Louisville, Ky., the publisher of True Confessions, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a 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 it has notice. (Apr. 27, 1934.)

0653. **Vendor-Advertiser—Poultry Worm Medicine.**—Arcady Laboratories, Inc., of Chicago, Ill., vendor-advertiser, is engaged in selling a poultry worm medicine designated as "Worm-A-Tonic", and in advertising represented:

Keep your laying hens and baby chicks healthy with Arcady Worm-A-Tonic for flock treatment for worms, coccidiosis, etc.

R. K. D. Worm-A-Tonic get immediate results in the eradication of round worms, tape worms, and similar parasites, prevents and controls coccidiosis.

Complete, simple flock treatment of poultry for the prevention or control of parasitic conditions is required by every poultryman. Arcady Worm-A-Tonic is an effective control of such conditions.

For worm prevention,

Arcady Worm-A-Tonic retards or stops the worm and parasitic growth.

* * * especially effective as a preventative of coccidiosis.

For the prevention of coccidiosis mix only five tablespoonfuls of liquid Worm-A-Tonic for each 100 birds in a moist crumbly mash.

Worm infestation usually begins when baby chicks are about 10 days old.
 * * * Begin using Arcady Worm-A-Tonic when your birds are 2 weeks old.
 Worm prevention in baby chicks. For your baby chicks add two table-
 spoonfuls of liquid Worm-A-Tonic to each gallon of drinking water for 5
 consecutive days.

As a preventative of worm infection in birds from 8 weeks to 5 months old,
 mix 6 tablespoonfuls of the liquid in a moist crumbly mash for each 100 birds.

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 competitors, in that said poultry worm medicine is not a competent treatment for poultry infested with parasites or worms other than roundworms.

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 and to cease and desist from representing in advertisements or otherwise:

(a) That said Worm-A-Tonic is a competent treatment for poultry infested with parasites or worms other than roundworms.

(b) That said Worm-A-Tonic is a competent treatment for poultry infested with tapeworms.

(c) That said Worm-A-Tonic is a component treatment for coccidiosis.

(d) That the use of said Worm-A-Tonic will prevent or control coccidiosis, parasitic conditions, or worm infection.

(e) That said Worm-A-Tonic will eradicate worms or stop worm or parasitic growth.

(f) That said Worm-A-Tonic will retard the growth of parasites or worms other than roundworms.
 or representations of like import. (Apr. 30, 1934.)

0654. Vendor-Advertiser—Medicinal Preparation.—Peruna Corporation, advertising as Peruna Tonic Co., Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Peruna" and in advertising represented:

HOW I GAINED WEIGHT—2 POUNDS A WEEK WITHOUT EATING MORE

DO JUST TWO SIMPLE THINGS—FIRM FLESH QUICKLY APPEARS

No oils or emulsions, no forcing down rich foods or drinks. Instead, eat what you want with never a rebelling, upset stomach. Yet firm flesh is quickly put on. You can easily gain from 2 to 4 pounds a week. See the scrawny lines of skinniness replaced by the curving lines of a beautiful figure—and feel stronger, better, and more energetic than you ever have in your life.

There are just two simple things to do. Give your system the mineral, stomachics, and herb conditioners contained in Peruna tonic, obtainable at

any drug store. Take a tablespoonful before meals and before going to bed—pleasant and inexpensive. Then eat whatever you want to, but drink three times as much water with your meals as you have been drinking.

At the end of 4 weeks you'll see the scale up 7 to 10 pounds—according to how much underweight you are—from what you were the day you started. Your health, too, will be much better. You'll have more strength and energy. Your complexion will be improved, nerves will be far calmer, your stomach won't be upset, and friends will comment about how much younger and better you look. You will soon avoid the constant embarrassment of being drawn and skinny. And you'll do it without forcing unwanted quantities of rich food, drinks, and bad-tasting oils into your stomach and upsetting digestion. (Portraying exaggerated "before" and "after" persons.)

FOR COUGHS DUE TO COLDS

For persons who take colds easily or for those who find it difficult to rid themselves of coughs due to colds. Peruna tonic is intended to ward off and give quick relief through the process of building strength and resistance.

and by radio broadcasts:

The cold season with its coughs, sneezes, and colds is here again. Even if you have no cold right now, you probably expect to have several before the winter is over. But why have colds at all? I am going to make a statement that will startle you; but it's true, every word of it.

You can knock out a cold now in 24 hours, and never have another cold all winter long.

Peruna, the new cold fighter, produces these amazing results. If you want to prove our statement, and see how quickly Peruna will knock out your cold, go to your nearest drug or department store today and buy the generous full-size bottle of this great cold chaser. This new cold fighter positively destroys a cold in 24 hours or your money back. To have a test bottle of this amazing cold fighter sent you absolutely free, write to station WFAA. Just tell us how many bad colds you usually have each winter, and Peruna will send you some valuable personal advice on colds along with your free test bottle. Chase out your cold right now, and knock it out for good. Write for your free test bottle today. Address Peruna, spelled P-E-R-U-N-A, care of Radio Station ----- at -----

Here comes the handkerchief brigade—everybody coughing and sneezing and sniffing—everybody looking terrible. Yet, there's no reason in the world why you should ever have a bad cold.

Do you know that you can chase out a cold in 24 hours and never have another bad cold all winter? That's a strong statement, but we can prove it. In fact, we'll prove it to you absolutely free with our amazing cold fighter called "Peruna." Go to your nearest drug or department store and buy the generous full-size bottle of this great cold chaser. This new cold fighter positively whips a cold in 24 hours or your money back.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees that it will not hereafter make or cause to be made any representation which will lead the average reader to believe—

That Peruna is more than a tonic to build up bodily resistance, such bodily resistance often preventing and relieving colds; or

That Peruna will increase weight except as it acts as a tonic; and stimulant to the appetite.

It is also stipulated and agreed that if the said Peruna 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. 30, 1934.)

0655. **Publisher—Perfumed Business Cards.**—Opportunity Publishing Co. of Chicago, Ill., the publisher of Opportunity, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of perfumed business cards.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 4, 1934.)

0656. **Publisher—Dehydrated Kelp Preparation.**—The Union Tribune Publishing Co., of San Diego, Calif., the publisher of San Diego Union and San Diego Tribune, daily 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 preparation compound of dehydrated kelp designated as "Iokelp."

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 4, 1934.)

0657-0661. **Publisher—Materials for embroidering; sex stimulants and tonic; feminine hygiene preparations; hair dye; hair tonic.**—W. H.

Gannett, Publisher, Inc., Augusta, Maine, publisher of *Comfort*, a home magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturers and vendors of (0657) yarns, needles, stamped patterns, etc., for embroidering at home for scarfs, table use, etc.; (0658) Peptabs—for use as sex stimulants and tonic; (0659) feminine hygiene preparations; (0660) a hair dye, called "Gray Out"; (0661) a hair tonic.

In stipulations filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertisers or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertisers before the Commission, and agrees to observe and abide by any cease-and-desist orders based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulations or other agreements between the advertisers and the Commission of which it has notice. (May 4, 1934.)

0662. Vendor-Advertiser—Mirror and Window Cleaner.—American Products Co., advertising as Zanol Products Co., of Cincinnati, Ohio, vendor-advertiser, is engaged in selling, among other things, a window and mirror cleaner designated "No frost" through agents and in advertising represented:

AGENTS \$6 A DAY

Wonderful Chance to Make \$6 a Day Taking Orders for No-Frost

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;

(c) That in future advertising, where a modifying word or phrase is used in direct connection with a specific claim or repre-

sentation 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. (May 16, 1934.)

0663. Vendor-Advertiser — Windshield Shade.—Goergen-Mackwirth Co., Inc., of Buffalo, N. Y., vendor-advertiser, is engaged in selling a roller celluloid adjustable windshield shade designated "Auto Eyes", through agents, and in advertising represented:

Agents make up to \$8 to \$16 per day selling "Auto Eyes."

A much needed inexpensive device just put on the market which protects the driver and passengers from sun glare from every angle * * *. Result of test sales in Buffalo average better than 1 sale in 3 interviews, or 30 units per day.

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 a chance or 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. (May 16, 1934.)

0664. Vendor-Advertiser—Hair Treatment.—Frances E. Kahn, trading as Frances Fagan, proprietor, and Arch C. Riddell, sole distributor, Hollywood, Calif., vendor-advertisers, are engaged in selling a treatment for the hair designated “Frances Fagan Tonic for Gray Hair”, and in advertising represented:

Renew the youthful color of your hair this safe, easy way.

Prejudice against hair dye being so prevalent, those who regret the departing color of youth from their hair will welcome the news of this remarkable long-tested secret formula * * * Frances Fagan Tonic for Gray Hair. Simple to use * * * absolutely safe * * * fine for the scalp * * * improves the hair texture * * * renews any shade.

Stimulates dormant color glands, thus restoring silken-soft luster and original color to the hair, without streaking.

Easy to use. One colorless liquid only * * * no mixing. Rub just a little into the scalp once a day. Gradually youthful color returns. Then one application a week will maintain it. Shampoo and sun your hair all you want. Commercially, as well as socially, gray hair is a handicap. Men, particularly, like the gradual return of color, as no embarrassment is experienced.

Since 1928 Frances Fagan Tonic for Gray Hair has been successfully used by the select clientele of some of America's most exclusive stores * * * in New York, on the Pacific coast, in the old South.

INNOCUOUS COLOR

Prejudice against hair dye being what it is, those around 39 might like to know of a hair tonic which puts color back into grizzly locks * * * Frances Fagan's Hair Tonic is a clear, odorless liquid which reconditions hair and scalp, and puts life and verve back in the old tresses. * * * Getting away from the gamble and expense of dyes is big news for the woman with this particular kind of bother.

NOT A DYE

Frances Fagan Hair Tonic is not a dye, nor does it contain any dye properties.

It is harmless, easy to apply, has a pleasant odor, and slowly, but in a most perfect and satisfactory manner, restores gray hair to its natural color. It is a known fact that color glands and hair roots, if kept active and normal, will continue indefinitely to supply rich, natural-colored hair. Frances Fagan Hair Tonic does this and more—it stops falling hair and removes dandruff.

There are no special or numbered colors—one clear liquid renews any shade. It improves the texture and gives life and silken-soft luster to heads which have been overdyed, sunburnt, or have suffered by neglect.

Frances Fagan Tonic for Gray Hair has been long tested and definitely proven to be the safe and natural method of bringing back original color to gray and faded hair.

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, having the capacity and tendency to mislead and deceive the purchasing public into buying said preparation in the erroneous belief that the use thereof will accomplish in all cases the results set out or indicated therein; whereas the medical advice received by the

Commission is that this product is neither safe, fine for the scalp, nor innocuous; that it contains no ingredients which will stimulate dormant color glands or recondition the hair and scalp or put life and verve back into the old tresses; or keep color glands and hair roots active and normal, or stop falling hair, or correct stubborn cases of dandruff; that while this product may be termed a coloring agent, rather than a dye, in the strict scientific sense, nevertheless the distinction is not familiar to those outside the dye industry, and the statements made in the advertising can only be interpreted by the user as meaning that said product does not color the hair, but causes the natural color to be redeveloped, whereas the color produced is not a revival of the hair's natural color, but is due to lead compounds deposited on the hair which may result in lead poisoning of the user.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is either safe or innocuous.

(b) That it will either stimulate dormant color glands or recondition the hair and scalp or put life and verve back into the old tresses.

(c) That it will either keep color glands and hair roots active and normal or stop falling hair or continue indefinitely to supply rich, natural-colored hair or correct stubborn cases of dandruff.

(d) That said preparation is not a dye in the commonly accepted meaning of the term.

(e) That the use of said preparation will renew the youthful color of one's hair or will renew any shade or will restore the original color to the hair or will cause youthful color gradually to return or will restore gray hair to its natural color is the natural method of bringing back original color to gray and faded hair, and all representations of like import.

It is also stipulated and agreed that if the said Frances E. Kahn and/or Arch C. Riddell 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. (May 16, 1934.)

0665. Publisher — Personal Cards and Stationery.— Opportunity Publishing Co., Chicago, Ill., the publisher of Opportunity, a magazine of wide interstate circulation, printed, published, and circulated advertisements and representations for the manufacturer and vendor of personal cards and stationery through agents.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease-and-desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 21, 1934.)

0666. **Publisher—Account Collecting System of Forms, Etc.—Opportunity Publishing Co., Chicago, Ill.,** the publisher of Opportunity, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an account-collecting system of forms, 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. (May 21, 1934.)

0667. **Vendor-Advertiser—Chewing Gum.—Tacit Products, Inc.,** advertising as M. Harvard, St. Louis, Mo., vendor-advertiser, is engaged in selling a chewing gum designated as "Tacit Chew" through agents, and in advertising represented:

HERE'S \$12.90 FOR YOU

AND YOU DON'T HAVE TO PUT UP A SINGLE DIME—JUST WRITE ME FOR YOUR SUPPLY TODAY

In the 20 years I have been in the direct-selling game I never heard of a more liberal opportunity to make money than that which I offer you today. Just think of it, despite so-called "tough" times I am so sure of our proposition that I am willing to equip you with the actual merchandise without your putting up one single dime * * * and there are thousands of sales right in your own locality just waiting a call. I want to put 500 men and women to work at once, and to start you off I have a proposition that will give you \$12.90 net profit without your putting up a single cent for supplies.

REMEMBER NO DEPOSIT—I TRUST YOU

Our product is nationally advertised, has never before been sold direct to the consumer and is a remarkable repeat item—a popular price seller. If you are sincere and want to get started again toward real money, write me. I only want 500 representatives, so you better hurry.

M. Harvard, 6710 Vernon Place, St. Louis, Mo.

To those who responded to the above advertisement the respondent sent \$25 of "Tacit Auction Money", enclosing a circular describing Tacit Chew ("a chewing gum antacid") as follows:

A remarkable new product that gives gum chewers everywhere a mild antacid in combination with a delicious chewing gum.

Revolutionary in its principle is this remarkable new gum! The wise ones shook their heads. The old owls in some of the best research laboratories in the country said, "We tried it; you can't do it! How are you going to make it alkaline? The ordinary gum base must be neutral—neither alkaline nor acid—it can't be done!"

But a scientifically minded St. Louis physician insisted that it could be done. In his quiet way he worked on the formula. He persisted until his perseverance was crowned with success. And the result is "tacit chew", a gum that gives a positive alkaline reaction in the mouth in 5 seconds!

* * * a convenient, handy form of a mild antacid! * * * Chew it as an aid to digestion, and as a corrective for an overacid mouth. It benefits the gums! It stimulates the digestion! And it is pleasant to taste.

Such circular portrayed also the retail display packages upon which the following representations appeared:

Delicious new chewing gum neutralizes acids.

Chew Tacit for acid indigestion.

Tacit chew antacid for stomach distress caused by gas and acid conditions.

The plan to distribute and sell the gum was then outlined, which in brief was as follows:

The advertiser agreed to send those wishing to wholesale the gum:

1. A free demonstrating kit;
2. A generous supply of free sample sticks of Tacit Chew;
3. A case of 12 display cartons, each containing sixteen 10-cent packages of gum;
4. A 30-day option on exclusive territory; and
5. A sales manual which "tells you how to sell both retail and wholesale."

The 12 cartons cost the distributor \$9 plus postage, sold to retail dealers for \$1.05 per carton, \$12.60, and retailed for 10 cents per package, \$19.20.

Those desiring to retail it were offered:

Three cartons, 48 packages, to sell, and 1 carton, 16 packages, to give away as samples, for \$3, also \$25 "Tacit auction money" "advance on your first week's pay", \$48 for selling 48 packages of gum and \$25 "advance on second week's pay for promptness" and \$2 for

20. "names and addresses of people to whom you have advertised Tacit Chew", making \$100 "Tacit auction money" in all.

The respondent also submitted a 10-day credit plan.

In a folder the respondent offered to send 4 cartons of gum on credit, for which the recipient was to remit \$3 at the end of 10 days. For each 10-cent package of gum sold he was to be given \$1 in tacit auction money, and for each name and address of persons called on, 10 cents in tacit auction money.

The respondent explained the use of tacit auction money as follows:

HERE'S WHAT I WANT YOU TO DO

I want you to become my agent in your locality for a new Tacit product. I want you to help me advertise by word of mouth "Tacit Chew"—the delicious new antacid chewing gum. I'm tired of spending huge sums of money in magazines, newspapers, radio, billboards, and many other forms of advertising that eats up hundreds of thousands of dollars as quick as a sea lion swallows a herring! I want to quit pouring advertising money down the sewer!

In another folder the respondent explained how "You can get a share of this \$1,000 profit-sharing distribution" and use Tacit auction money "earned by agent-employees in accordance with the rules of the tacit auction" to bid on an 8-cylinder Ford sedan—portrayed—and many articles of merchandise portrayed and described in another folder.

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 "Tacit auction money" is described in terms of cash, using the regular dollar symbol when referring to this scrip, which in turn is so printed as to simulate checks, drafts, and certificates used in commerce, tending thus to mislead and deceive recipients as to their value; a close examination of the follow-up literature discloses that the \$12.90 profit offered the prospect in the contact advertisement is not cash at all, but \$12.90 worth of "further merchandise on credit"; the representations as to the therapeutic value of the gum are exaggerated, misleading, and deceptive; the emphasis placed upon an alleged auction to be held without date or limit is misleading; and the plan as a whole is an unfair method of competition.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that it has definitely discontinued the advertising herein found objectionable and does not at this time intend to resume such advertising in the future, and has abandoned entirely, without any intention to resume, the method of selling hereinabove described. Respondent 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.

It is also stipulated and agreed that if the said Tacit Products, Inc., 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. (May 21, 1934.)

0668. **Publisher—Prostate Gland Treatment Device.**—C. H. Young Publishing Co., Inc., of New York City, the publisher of Breezy Stories, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an electric device for treating prostate gland with heat.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease-and-desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (May 25, 1934.)

0669. **Vendor-Advertiser—Bleach Cream.**—Golden Peacock, Inc., of Paris, Tenn., vendor-advertiser, is engaged in selling Golden Peacock Bleach Creme to be applied to the skin, and in advertising represented:

For this new discovery, Golden Peacock Bleach Creme, whitens the most roughened muddy complexion one shade a night * * *.

Quickly banishes freckles, blackheads, pimples, blotches * * *.

March 20, 1853.—Again examined Mrs. A, who has been suffering from ivy poisoning on hands and face. Discovered an astounding condition. Prescription 581, which I had given her, had eliminated every trace of the ivy poisoning, and in addition had left her usually poor complexion clear and white and free from blemishes.

April 4, 1854.—Heaven be praised. * * * My wife was overjoyed with prescription 581, which I gave her as a new complexion creme. I must confess that I have done wonders for her. It has given her skin freshness and pearl-like clearness, which now accentuate her good features mightily. She swore me to secrecy about its composition.

These two brief entries in an obscure North Carolina physician's notebook tell the story of the discovery of what is now called Golden Peacock Bleach Creme. How Dr. Thomas's wife won the friendship and admiration of everyone in the little Tennessee town that became their home.

Science proves that complexions can be restored to childlike whiteness and smoothness.

It contains costly refined ingredients from Spain and France, which act in a peculiar way on the outer layer of the skin—completely revitalizing it and changing it in color and texture to a childlike whiteness and texture.

* * * large and small discolorations are erased as if by magic.

* * * pimples, moth patches * * * are cleared away by the sure corrective powers of this unique cosmetic.

All of the great surgeons and doctors now prescribe one certain ingredient it contains for the treatment of skin defects in children.

Beauty salon operators have learned to depend upon Golden Peacock Bleach Creme to keep away freckles—as well as other skin discolorations.

* * * but none possess the same rare ingredients as discovered for the first time by Dr. Thomas nearly a hundred years ago.

If you want to get rid of * * * other skin blemishes * * *.

* * * It has the power to heal, to relieve, to allay skin disorders.

* * * it does contain certain specific secret ingredients that act to freshen and clarify the skin of all defects.

If you are to gain the benefits which Golden Peacock Bleach Cream can give—* * * the freedom from blemishes.

Golden Peacock is * * * a remover of blemishes.

More than 30 well-known scientists and physicians have contributed their knowledge of skin conditions and skin care to the formula of Golden Peacock.

* * * a decidedly effective method of combating skin disorders * * * pimples, sallowness, liver spots * * *.

But no ordinary cream or lotion * * * can bleach skin white and keep it white. You must use for this purpose a genuine bleach cream—Golden Peacock.

But with ordinary skin three applications are required to bring the perfect Ivory whiteness for which this preparation has won its fame. Age lines will disappear.

While Golden Peacock Bleach Creme meets the requirements of 99 percent of feminine skins * * *.

After your skin has been bleached to a pearl-whiteness * * *.

Golden Peacock Bleach Cream will whiten your skin one shade a night—or your money back—no matter how dark.

Blotches vanish too!

Even pimples * * * blotches vanish.

Smooth it on your skin tonight. Next morning notice how muddy sallowness has give way to unblemished whiteness * * * all imperfections that rob you of true loveliness vanish too.

* * * it banishes the ravages of * * * age and worry.

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, and 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) Generally that said bleach cream is an effective treatment for discolorations, blotches, moth patches, skin disorders, skin defects, sallowness, liver spots, or skin blemishes, unless specifically limited to those that are due to outward causes.

(b) That said bleach cream is an effective treatment for pimples unless qualified to indicate that beneficial results may be expected only where the pimples are confined to the outer layer of the skin.

(c) That said bleach cream will restore or change the complexion to childlike whiteness or childlike texture.

(d) That said bleach cream will revitalize the skin.

(e) That any corrective powers attributed to said cream are sure.

(f) That said bleach cream will clarify the skin of all defects.

(g) That said bleach cream will remove age lines.

(h) By pictorial representation that any substantial benefits from the use of said bleach cream will be produced in one night or by one application.

(i) That one of the ingredients in said bleach cream is prescribed by all great surgeons or doctors in the treatment of skin defects in children.

(j) That beauty-salon operators generally rely upon said bleach cream.

(k) That said bleach cream meets the requirements of 99 percent of feminine skin or any other proportion in excess of that which has been demonstrated by competent evidence.

(l) That said bleach cream contains rare ingredients which are not contained in any other cosmetic.

(m) That said bleach cream will banish the ravages of age or worry.

and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees to cease and desist from—

(a) Publishing in advertisements fictitious entries purporting to have been copied from the notebook of a physician.

(b) Publishing in advertisements fictitious statements regarding the discovery of the formula for said bleach cream.

(c) Publishing in advertisements incorrect statements as to the number of physicians or scientists who have contributed to the formula of said bleach cream.

(d) Using in advertisements the following words or phrases, "banish", "rid", and "freedom from", in such a way as to imply permanent results.

It is also stipulated and agreed that if the said Golden Peacock, Inc., should ever resume or indulge in any practice violative of the provisions of this agreement, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 28, 1934.)

0670. Publisher—Vigor Tablets.—The publisher of a magazine of wide interstate circulation printed, published, and circulated adver-

tisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of Vigor 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. (May 28, 1934.)

0671. Vendor-Advertiser—Hair Dye.—The Rit Products Corporation, 1401 W. Jackson Boulevard, Chicago, Ill., vendor-advertiser, is engaged in selling a hair dye under the name of "Rit" and in advertising represented:

No more gray hair.

Bring back its youthful color.

Gray hair * * * can now be changed to a beautiful, glossy natural brown.

* * * a dye that changes gray hair to a natural brown * * *.

You can quickly renew your hair's natural color, bring back its softness and glossy sheen.

New discovery ends gray hair, renews natural color.

New discovery changes gray hair to natural color.

* * * you can change gray hair to a beautiful glossy natural shade—bring back the softness and sheen of youth.

Rit gives an even natural color to the hair.

She got the job, but only after getting rid of her gray hair.

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 and to have the capacity and tendency to mislead and deceive the purchasing public into buying said hair dye in the erroneous belief that the same are true and that the use thereof eliminates the growth of gray hair and that a person using said preparation can get the "original" color of the hair as when young.

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 hair dye will bring back or renew any color, shade or sheen to gray hair;

(b) That said hair dye will impart the original or former color or shade to gray hair;

(c) That the use of said hair dye will end gray hair, enable one to be rid of gray hair or result in no more gray hair;

(d) That Rit hair dye will eliminate the cause of gray hair or prevent its growing out gray;

(e) That Rit will renew or restore the natural or former color of the hair; and

(f) That said hair dye will impart a natural color or shade to gray hair unless qualified to clearly indicate that the color imparted merely simulates a natural color but does not impart or restore the former color or any color as produced by nature;

and all representations and statements equivalent or similar thereto in form or substance.

It is also stipulated and agreed that if the said Rit Products 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. (June 4, 1934.)

0672. **Publisher—Herbal Tonic.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of herbal tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (June 4, 1934.)

0673. **Publisher—Female Relief Compound.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a female relief compound.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertise-

ments; disclaims any interest in the business 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. (June 6, 1934.)

0674. **Publisher—Female Relief Compound.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representatives for the manufacturer and vendor of a female relief compound.

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. (June 11, 1934.)

0675. **Publisher—Mushroom Spawn.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of mushroom spawn.

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. (June 11, 1934.)

0676. **Publisher—Horoscopes, Etc.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated adver-

tisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of horoscopes, 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. (June 13, 1934.)

0677. **Publisher—Stomach Remedy.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a stomach remedy.

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. (June 13, 1934.)

0678. **Publisher—Pain Relief Preparation.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a pain-relief product called "Hexin."

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. (June 13, 1934.)

0679. Vendor-Advertiser—Refrigerator Air Conditioner.—The Purodor Manufacturing Corporation, Madison, Wis., vendor-advertiser, is engaged in selling an air conditioner for refrigerators designated as "PurOdor", and in advertising represented:

AGENTS UP TO \$10 TO \$15 A DAY

100% profit. A Miracle of Modern Science. Every refrigerator or ice box owner a prospect. Foods keep fresher and more palatable. Representatives wanted in every community. Send \$50 for \$1.00 sample and sales facts. Sample price refunded on first order. Or write for free particulars. P. O. Box 463, Madison, Wisconsin.

PurOdor is to the food in your refrigerator what the gas mask was to the soldier.

This economical air conditioner absorbs and purifies all food acid gases and organic fumes commonly called odors. Every food can be recognized by its individual odor without being seen or tasted.

PurOdor contains activated carbon of the highest quality, to which base is added some ten mineral neutralizing salts formulated to eliminate that characteristic conglomeration of food acid gases and organic fumes (Ice Box Odor).

Place PurOdor on guard and you can keep cantaloupe, butter, fish, milk, cheese, berries, cauliflower, bacon, shrimp, etc., side by side uncovered without the slightest fear that even the daintiest foods or ice cubes will be tainted.

PurOdor prevents intermingling of food flavors, retards mold, wilting of salad vegetables, drying out of all foodstuffs.

PurOdor controls humidity and purifies and increases air circulation, reduces frost accumulation on coils, reduced temperature, increases efficiency of refrigerant and reduces the operating and defrosting time.

PurOdor saves food spoilage, embarrassment of serving tainted foods, saves operating costs, ice, and labor required to wrap foods.

Keeps foods pure, fresh and wholesome.

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 PurOdor is to the food in your refrigerator what the gas mask was to the soldier; or

(b) That it purifies all food acid gases and organic fumes commonly called odors; or

(c) That it is capable of eliminating the so-called "ice box odor" or that by its use butter, fish, milk, vegetables, shrimp, bacon, and dainty foods may be kept side by side uncovered without being tainted; or

(d) That it prevents intermingling of food flavors or wilting of salad vegetables or drying out of all food stuffs, or

(e) That it retards mold or controls humidity, or

(f) That it purifies the air, or reduces the temperature, or the operating cost of refrigeration; or

(g) That it saves food from spoilage, or keeps it pure, fresh, and wholesome;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees:

(h) 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;

(i) 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

(j) 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 PurOdor Manufacturing 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. (June 13, 1934.)

0680. Vendor-Advertiser—Feminine Hygiene Preparations.—Rex Drug Co., Chicago, Ill., vendor-advertiser, is engaged in selling various sexual preparations designated as "Rex Pep Pills", "Rex Pain Pills", "Rex Douche Powder", etc., and in advertising represented:

Married women: Stop sex worry. 3¢ stamp brings valuable free offer and information concerning greatest intimate problem. Rex Drug Co., Dept. 2-M, 201 E. 35th St., Chicago.

Rex Pep Pills are expressly compounded to bring back the energy, ambition, and natural powers of youth. It strengthens the courage, making possible the rich pleasure enjoyed by healthy, normal individuals. Rex Pep Pills, a tried, tested, and proven product of merit, will be an everlasting source of genuine happiness.

Rex Pep Pills are harmless to take and are different from all other preparations intended for this purpose.

Rex Improved Hygienic Powder is a powder deadly to all harmful germ life, yet so mild that it will not injure the most delicate membranes. It is non-poisonous; therefore not dangerous.

Riviera French Female Pills: No. 10 for mild cases of irregular menstruation and No. 11—Triple Strength, for the most stubborn cases.

Rex-O-Cone Suppositories: Rex-O-Cones are small, white, odorless suppositories containing powerful, quick-acting, germicides that are released in the vagina as soon as the cone melts, causing them to become effective at once and remain so for many hours thereafter. They are made under the supervision of a registered pharmacist.

They are the result of scientific study and are the surest and safest antiseptic known to free women from sex worry, doubt, and uncertainty.

Do the uncertainties of married life keep you worried? Do you use harsh washes, cumbersome and unhealthy methods, or dangerous drugs? Are you or yours nervous, jumpy, or easily irritated from any of these? No longer are these cumbersome, unhealthy, and nerve-wracking methods and drugs necessary. Thousands of women have learned the new way to carefree enjoyment of married life, and now you too can test this method absolutely free.

As the Rex-O-Cone melts it spreads and covers every part of the female organ with a powerful protective covering and it is this covering that is your safeguard. It is this powerful and complete covering of the melted Rex-O-Cone that protects you for many hours after insertion, for all night if you insert before going to bed. Surely an easy way to have peace of mind. Clean, odorless, easy to use, no muss or fuss, yet absolutely safe. Simply insert are the only directions necessary. Convenient to carry and use anywhere.

French Pessary: The genuine French pessary is sanitary and is easily introduced by yourself. It causes no irritation or pain and has proved a boon to womankind.

They do not irritate even when used constantly and can be retained in place for any length of time without discomfort.

They are recommended by physicians everywhere for women to use.

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 any of said products is an effective contraceptive or abortifacient;

(b) That by the use of such products a woman may "stop sex worry";

(c) That Rex Pep Pills will either—

Bring back the energy, ambition, or natural power of youth; or

Make possible "the rich pleasure enjoyed by healthy, normal individuals"; or

Are either a proven product of merit or different from all other preparations intended for these purposes;

(d) That Rex Douche Powder is either—

"Deadly to all harmful germ life", or

"Will not injure the most delicate membranes";

(e) That Riviera French Female Pills are "French", or that they constitute an effective treatment to induce menstruation or for any similar purpose;

(f) That Rex-O-Cone Suppositories are either—
Germicidal; or

Effective for many hours after insertion; or

Are either the surest or the safest antiseptic known to free women from sex worry, doubt, or uncertainty; or

(g) That by the use of Rex-O-Cones thousands of women have “learned the new way to care-free enjoyment of married life”;

(h) That a “Rex-O-Cone” protects you “for all night if you insert one before going to bed”;

(i) That the so-called French Pessary is easily introduced by oneself, or that inferentially or otherwise it is at all dependable when self-applied;

and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Rex Drug 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 13, 1934.)

0681. **Publisher—Horoscopes, etc.**—The publisher of a magazine of wide interstate circulation printed, published and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of horoscopes, 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. (June 18, 1934.)

0682. **Publisher—Penny Candy Deal.**—The publisher of a magazine of wide interstate circulation printed, published and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a penny candy deal.

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 respon-

dent 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. (June 18, 1934.)

0683. **Publisher—Hair and Scalp Tonic.**—The publisher of a magazine of wide interstate circulation printed, published and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair and scalp tonic.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (June 18, 1934.)

0684. **Publisher—Motor Lubrication Composition.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of "Graf-Ex", for motor lubrication.

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. (June 18, 1934.)

0685. **Vendor-Advertiser—Greeting Cards.**—The Drexell Products Corporation, Brooklyn, N. Y., vendor-advertiser, is engaged in selling greeting cards and in advertising represented:

Make up to \$42.00 weekly selling our attractive Christmas gift assortments. Men or women both find quick sales. You can too if you write

DREXELL PRODUCTS CORP.,
713 Kent Ave., Brooklyn, N. Y.

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 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. (June 15, 1934.)

0686. Vendor-Advertiser—"Comfort Food Mat."—The Kristee Manufacturing Co., Akron, Ohio, vendor-advertiser, is engaged in selling "Comfort Food Mat" and in advertising represented:

AGENTS! MAKE UP TO \$90 A WEEK

Simply show it and take orders! No wonder men and women everywhere find it easy to pocket \$3 and \$5 in an hour full and spare time!

SALES GUARANTEED

You don't risk one cent of your money. Your sales are guaranteed.
Opportunity to make \$90 a week.
Hustlers making 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 mislead-

ing 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;

(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; and

(e) That respondent will not represent that the sales of its agents are "guaranteed" unless and until such be the fact.

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. (June 18, 1934.)

0687. Vendor-Advertiser—Egg and Cream Whipper.—The St. Louis Manufacturing Co., St. Louis, Mo., vendor-advertiser, is engaged in selling an egg and cream whipper designated as "Whirl Whip" and in advertising represented:

New kind of whipper built on same principle as spoon whipping, but automatic turn slow-whips fast! 30% to 40% more volume from eggs and cream. Stays frothy and stiff. Easier to operate in stiff butters. Easier to clean. Agents make up to \$20 in a day. No experience needed.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future adver-

tising 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 St. Louis 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. (July 2, 1934.)

0688. **Vendor-Advertiser—Beer Signs.**—The American Standard Manufacturing Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling beer signs and in advertising represented:

\$3.00 to \$6.00 on every delivery—up to \$45.00 daily cash profit.

The respondent represents that since this action was instituted it has definitely discontinued the business of selling said beer signs to users through agents in interstate commerce and hereby stipulates and agrees that in the event it decides to resume the advertising of such beer signs again, such advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that it will not exaggerate the probable earnings of its salespersons.

It is also stipulated and agreed that if the said American Standard Manufacturing Co. should ever presume 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 2, 1934.)

0689. **Publisher—Cold Treatment.**—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 Creomulsion, a cold treatment.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission; and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (July 10, 1934.)

0690. **Vendor-Advertiser—Motor Oils.**—The Central Petroleum Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling "Cen-Pe-Co" motor oils and in advertising represented:

I'LL SET YOU UP IN THE OIL BUSINESS

Without Investment

I want an ambitious, energetic man in every county to join me in the oil business. I'll make him my partner, furnish everything that's needed to do business and divide the profits 50-50 every week. I have hundreds of men now with me on this basis—ready for a hundred more, part or full time. It's a chance of a lifetime. In this business you can make

\$50 to \$100 a week

YOUR SHARE OF THE PROFITS

Wengard, in Ohio, made \$430 for his share in one week. Montgomery, in Iowa, made \$216 the first week he started. Hundreds are making big money every month the year 'round. It's a great business. Everybody buys oil. You simply take orders on Long Credit terms, for nationally known lines—Gen-Pe-Co-Motor Oils—Quality Paints and Roofing. We ship direct from nearby warehouse and collect. Pay you every week.

Write quick for this chance. Just say "I am interested in your proposition", in a letter or on a postcard. Mail it and I'll send complete particulars by return mail. First applications get the preference. Act Now!

P. T. Webster, General Manager
Central Petroleum Co.,
472 Century Bldg., Cleveland Ohio.

\$50 to \$100 a week easily made.

Hundreds making \$200 to \$500 every month the year around.

Local distributors wanted. Make \$50 to \$100 a week.

Run my oil agency \$50 to \$100 a week your share of the profits.

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 make unmodified representations or claims of earnings of salespersons in excess of the average earnings of the active full time salespersons of respondents achieved under normal conditions in the due course of respondents' business;

(b) That respondents will not represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondents' salespersons under normal conditions in the due course of respondents' business; or

(c) That respondents set anyone up in the oil business, until such be the fact; or

(d) That respondents will make any person a partner with them, until such be a fact; or

(e) That the commission allowed the agent is a division of "profits", unless the "profit" fixed by the respondents from time to time is the full amount of the difference between the net cost to respondents plus transportation from the factory to respondents and the selling price to consumers; and all representations of like import.

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, or either of them, in the trial of the complaint which the Commission may issue. (July 6, 1934.)

0691. **Vendor-Advertiser—Greeting Cards.**—The Thistle Engraving and Publishing Co., Cincinnati, Ohio, Vendor-advertiser, is engaged in selling greeting cards and in advertising represented:

Pay you up to \$5.00 on every call selling Xmas cards.

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 advertisement 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 it in the trial of the complaint which the Commission may issue. (June 6, 1934.)

0692. Vendor-Advertiser—Perfumed Business Cards.—The French-American Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling perfumed business cards and in advertising represented:

French perfumed business cards.

No competition.

* * * a local printer positively cannot duplicate 1,000 of our cards with 4 or six colored pictures for one hundred dollars the thousand.

Samples free.

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 business cards cannot be duplicated by a local printer for one hundred dollars per thousand.

(b) That there is no competition in the sale of said cards.

(c) That samples will be sent prospective agents free unless and until such samples are sent without requiring the payment of any money as a deposit or otherwise.

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said business cards to cease and desist from:

(1) Using the word "French" as a part of his trade name, unless and until he shall maintain and operate in France a bona fide establishment for the conduct of business similar to that conducted by respondent in the United States.

(2) Using the word "French" to describe said business cards unless and until said cards are printed in France or the perfume, with which said cards are scented, is imported from France.

It is also stipulated and agreed that if the said Gaston Robert 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. (June 18, 1934.)

0693. Vendor-Advertiser—Poultry Worm Medicine.—Dr. Hess and Clark, Inc., Ashland, Ohio, vendor-advertiser, is engaged in selling "Ver-mi-trol", a poultry worm medicine, and in advertising represented:

Ver-mi-trol is a flock treatment given in feed. It is particularly suited to precautionary treatment.

Don't let worms take your poultry profits this fall and winter when egg prices are at the top.

Treat your flock when you put them in laying quarters before worms get the upper hand.

Treat them with Dr. Hess Poultry Ver-mi-trol.

Two Flocks With Tape Worms Galore and Round Worms Aplenty
Hundreds of tape worms and round worms were found.

WORM CONTROL

WE HAD eighty-six wormy pullets and posted thirteen, found hundreds of round worms and tape worms.

We flock treated the remaining seventy-three with Ver-mi-trol.

VER-MI-TROL

Combats Worms in Poultry

What Ver-mi-trol does in these tests, it will do for your flock. At the first sign of worms, get Dr. Hess Poultry Ver-mi-trol.

We have found that any material which attempts to expel worms in a single dose has a bad effect on the bird.

* * * You can see by the continued increase in production that it has played havoc with worms.

If you have a wormy flock, it'll pay you to treat it with Dr. Hess Poultry Ver-mi-trol.

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 Ver-mi-trol is a competent treatment for poultry infested with tape worms.

(b) That said Ver-mi-trol is a competent treatment for poultry infested with worms other than round worms.

(c) That worms other than round worms can be controlled, prevented or combated by the use of said Ver-mi-trol.

(d) That preparations which are designed to expel worms from a single dose have a bad effect upon poultry.
and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Dr. Hess and Clark, 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 6, 1934.)

0694. Vendor-Advertiser—Shoe-Repairing Product.—The Perfect Manufacturing Co., Cincinnati, Ohio, vendor-advertiser, is engaged in

selling "Savasole", a shoe-repairing product, and in advertising represented:

Savasole pays agents up to (small type) \$42 a day.

Pays you up to (small type) \$6 an hour.

Take orders for Savasole plastic leather. Brings you as high as (minute type) \$42 daily profit.

Now improved Savasole pays you up to (minute type) \$42 a day.

Make up to \$135 a week.

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 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. (July 10, 1934.)

0695. Vendor-Advertiser—Greeting Cards.—Colonial Greetings, Rochester, N. Y., vendor-advertiser, is engaged in selling greeting cards and in advertising represented:

* * * and we'll show you how to earn up to \$75 weekly selling Colonial Personal Christmas Cards * * * Get America's most beautiful, lowest priced, fastest selling Christmas card line free. By this time next week you'll be making up to \$15 a day full or spare time * * *. Big business houses give you large orders that pay commissions as high as \$50 each. You can start making as high as \$15 a day right now * * *. Hundreds of Colonial representatives have been making up to \$15 daily so far this season. Even bigger profits are in store for you from now on.

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 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. (July 10, 1934.)

0696. Vendor-Advertiser—Weight-Reducing Garments.—Jeanne Walter, Inc., 389 Fifth Avenue, New York City, N. Y., vendor-advertiser, is engaged in selling garments for weight reduction and in advertising represented:

Latest brassiere reduces 2 to 3 inches at once.

Reducing girdle, 2- to 3-inch reduction at once.

My flesh-colored medicated gum rubber hose relieve swelling and varicose veins almost at once.

Waist and abdominal reducer for men reduce 2 to 3 inches immediately.

Special made-to-measure stockings. These stockings are specifically made to your individual measures, are excellent when a reduction is required above the knee or for the relief of painful swelling and rheumatism.

Exclusive manufacturer of Dr. Walter's Rubber Reducing Garments.

Panties for reducing the hips and limbs * * * they are extremely beneficial in relieving rheumatism or stiffness.

* * * all garments are made especially to measure.

* * * my famous medicated pure-gum rubber hose.

It is surprising to know how many people are suffering from swelling or varicose veins * * * My rubber stockings not only give immediate relief * * * and actually bring the limbs gradually back to normal and free from the need of any support at all * * *.

My more expensive anklets and stockings are all made to individual measurements which require the moulding (by hand) of each separate garment.

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 garments are manufactured by the respondent.

(b) That any definite reduction in weight or measurements will be obtained by wearing any of said garments.

(c) That the wearing of any of said garments will produce a reduction in weight or measurement immediately or almost immediately.

(d) That the rubber from which said garments are made is medicated.

(e) Generally that said garments are made to individual measure.

(f) That the wearing of said rubber stockings will relieve swelling or varicose veins almost at once or give immediate relief.

(g) That any of said garments are beneficial in the treatment of rheumatism.

(h) That in cases of swelling or varicose veins the wearing of said rubber stockings will bring the limbs back to normal or render them free from the need of any support.

(i) That any of said garments are moulded by hand.

It is also stipulated and agreed that if the said Jeanne Walter, 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, 1934.)

0697. Vendor-Advertiser—Feminine Hygiene Tablets.—The American Drug and Chemical Co., Minneapolis, Minn., vendor-advertiser, is engaged in selling "Pariogen Tablets" for feminine hygiene and in advertising represented:

Immediate and positive germ protection.

Yes, Madam, you can depend on Pariogen.

Married Women! Get Truth Free on Safe Dependable Feminine Hygiene.

* * * the safe dependable method.

Keep safe with Pariogen.

Be safe.

* * * destroys germs in few seconds.

Better, safer, than poisonous tissue-destroying carbolic or mercury douches.

* * * destroys most objectionable germs in a few seconds.

* * * extremely efficient in their bactericidal power.

Pariogen Tablets are indicated for the treatment of vaginitis, leucorrhoea, erosion of the cervix, also ulcerated and catarrhal inflammation of the vagina.

In cases of Vaginitis, Leucorrhœa, Catarrhal Inflammations, and Mucopurulent Discharges one Pariogen Tablet should be introduced * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is a competent treatment for vaginitis (unless limited to simple vaginal irritation), leucorrhœa, erosion of the cervix, ulcerated or catarrhal inflammation of the vagina, or mucopurulent discharges.

(b) That said preparation will destroy germs or afford germ protection.

(c) That said preparation has bactericidal power.

(d) By inference or direct statements that said preparation is a contraceptive.

It is also stipulated and agreed that if the said American Drug and 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. (July 10, 1934.)

0698. Vendor-Advertiser—Treatment for Rheumatism, etc.—The Gadoxin Co., Boston, Mass., vendor-advertiser, is engaged in selling treatment for rheumatism, and in advertising represented:

Rheumatism, arthritis, neuritis and similar complaints quickly curbed by Ga-Dox-In.

If you are faithful to the Gadoxin treatment, there isn't any reason in the world why you cannot enjoy the freedom from pain and physical discomfort * * *.

* * * I want to help you regain a treasure lost through the pain and discomfort of Rheumatism—your health.

Gadoxin quickly relieves swelling, stiffness, agonizing pain and aches—all the suffering inflicted by the diseases commonly classified as rheumatism, arthritis, neuritis, lumbago, sciatica, gout.

Here is proof that Gadoxin is doing amazing work among sufferers of rheumatism, arthritis, neuritis, and other ailments similar in nature.

It gives me great pleasure to recommend Gadoxin tablets for the relief of sciatic rheumatism * * *.

An arthritis sufferer sees improvement in three days.

I am well today without any rheumatism whatever—all from the results of Gadoxin.

Gadoxin will improve the condition of your blood.

Do you suffer the agonizing pains of sciatica?

After taking one box, I felt great relief and bought a second box and can now say without hesitation that after taking them my rheumatism has left me.

Gadoxin is the most wonderful medicine I ever used for neuritis. * * *
One box of your Gadoxin cured me.

Does inflammatory rheumatism cause you agony?

I had rheumatism so badly I could scarcely walk. * * * A friend using Gadoxin recommended it to me and I was soon entirely cured.

Gadoxin is a dependable treatment for rheumatism, arthritis, neuritis, and other ailments of a similar nature.

Rheumatics!

If you suffer pain due to rheumatism, arthritis, or neuritis, no matter how severe your case may be, you owe it to yourself to try my Gadoxin tablets.

Gadoxin is especially effective in the relief of pain due to arthritis.

* * * we honestly believe and guarantee that in your particular case it will give wonderful relief.

No matter how severe your case may be, Gadoxin will give greater relief than you ever dreamed of getting * * *

Gadoxin contains no harmful drugs * * *

* * * for the relief of pains due to * * * Arthritis and Neuritis.

If you suffer from painful rheumatism, arthritis, or neuritis, you owe it to yourself to try Gadoxin * * *

This is the season of the year, dreaded by men and women who are troubled with painful rheumatism, neuritis, and arthritis. If you are among these people, you owe it to yourself to try Gadoxin.

The ingredients of Gadoxin are indorsed by the medical profession for the relief of rheumatism and related ills, and the tablets themselves are not in any way harmful.

* * * it will help those who suffer pain from * * * arthritis and neuritis.

* * * these tablets contain nothing harmful.

They remove from the system the impurities that cause the trouble and have been especially effective in severe cases of arthritis.

* * * it acts directly on the blood, eliminating poisonous germs. It contains nothing that is in any way harmful to the system.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is a competent treatment for rheumatism, arthritis, neuritis, lumbago, sciatica, gout, or similar ailments.

(b) That by the use of said preparation health can be regained.

(c) That the user of said preparation will be free from pain or physical discomfort.

(d) That said preparation will relieve swelling or stiffness caused by rheumatism, arthritis, neuritis, lumbago, sciatica, or gout.

(e) That said preparation will relieve aches or pains caused by arthritis, neuritis, lumbago, sciatica, or gout.

(f) That said preparation will improve the condition of the blood, remove impurities from the system, or eliminate poisonous germs from the blood.

(g) That such preparation is a cure for rheumatism, neuritis, or other similar ailments.

(h) That said preparation will be effective regardless of the severity of the case.

(i) That said preparation will afford relief in the particular case of a prospective purchaser.

(j) That said preparation is not harmful or that it contains no harmful ingredients;

It is also stipulated and agreed that if the said Gadoxin 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 6, 1934.)

0699. Vendor-Advertiser — Kitchen Utensils.—The Central States Manufacturing Co., St. Louis, Mo., vendor-advertiser, is engaged in selling kitchen utensils, and in advertising represented:

Your chance to make \$20 a day demonstrating.

Unique plan pays you up to 4 profits on every call, as high as \$7 an hour, full or spare time.

Ambitious folks are pocketing earnings daily up to \$5 an hour, full and spare time.

Sells on sight, and agents easily make up to \$5 in an hour, full and spare time.

Up to \$5 an hour, full and spare time.

Profits up to \$5, 7, and more in an hour—\$27 in a day—and \$75 and \$100 in a week.

Even men and women without selling experience enjoy full and spare time profits up to \$5 in an hour, \$25 in a day, and over \$100 in a week.

Just turn crank and make up to \$15 in an hour.

Unique 4-profit plan that *guarantees sales* for you without risk.

And agents pocket up to \$17 in a day easy.

It already is bringing Speedo people everywhere as high as \$8 in an hour, \$27 in a day, and \$125 and more in a week.

No wonder agents everywhere are simply coining money! Up to \$40 and \$50 in a single day—\$15 to \$20 in one hour—1,000 devices sold in a month—\$522 in 30 days! Hundreds of records equally astonishing pour into the Speedo office daily. And still, the surface has barely been scratched!

No wonder agents report up to \$40 and \$50 in a single day! * * * No competition, tremendous demand, and 24,000,000 eager prospects! * * * Our plan actually guarantees profits for you without you risking a solitary cent! * * * Has actually brought Speedo people everywhere as high as \$10 and \$15 in a single hour, \$10 and \$50 in a single day, and \$200 to \$400 in only one week.

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 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; and

(d) That respondent will not represent in future advertising that its plan for distribution "guarantees" either the sales or the profits of its salespersons.

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. (July 16, 1934.)

0700. Vendor-Advertiser—Liniment.—The Hamlin Wizard Oil Co., Chicago, Ill., vendor-advertiser, is engaged in selling a liniment designated "Wizaroyal" and in advertising represented:

Too tired to sleep? Relax instantly this drugless way.

Now you can relax * * * tense wide-awake nerves * * *. You sleep restfully all night.

Used since 1867 to kill pain and drive out congestion * * *.

Acts at once to relieve pains of * * * sciatica, neuritis * * *.

"Rub out" chest colds, sore throats, coughs * * *.

* * * antiseptic ingredients act instantly to penetrate sore places and drive out irritating poisons, loosen congestion, and soothe pain.

Used * * * for sore throats * * *.

* * * an astounding quick relief for * * * sciatica, neuritis * * *.

Make this 3-minute test yourself when * * * rheumatism, sciatica, or neuritis pains grip you.

Find out how easily you can kill aches and soreness in * * * strained joints.

In 30 seconds, you are amazed as you feel Wizaroyal already starting to drive out * * * inflaming poison.

It acts to loosen congestion and relieve inflammation * * *.

Here is how thousands of rheumatism sufferers and victims of sciatica—neuritis * * * rub out pains of sore joints.

* * * it acts so fast to loosen congestion and clear out inflaming poisons.

* * * sciatica and lame muscles often seem to feel ten times as bad in

cold weather. Learn how you too can literally "rub out" these pains in as little as 3 minutes.

Just rub aching rheumatic joints * * * sore throat and chest with Ham-lins Wizaroyal.

Contains a powerful germ killing antiseptic as well as many soothing pain-reducing substances.

Penetrates aching area.

Just rub Wizaroyal on * * * any spot where there is pain or inflammation and pain goes, often in just 2 minutes.

* * * it contains a powerful antiseptic, said to be 8 times as powerful as U. S. Government germicidal standard.

It's great for lame backs.

Get rid of "athlete's foot" with Ham-lins Wizaroyal.

Wizaroyal, well rubbed into the feet and hands twice daily will prevent your catching "athlete's foot."

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 liniment will relax the nerves.

(b) That said liniment will produce sleep.

(c) That said liniment will "kill" pain, "drive out" congestion, "drive out" poison or relieve inflammation.

(d) That said liniment is a competent treatment for rheumatism unless qualified to indicate that only rheumatic aches or pains may be relieved.

(e) That chest colds, sore throats, or coughs can be "rubbed out" by the application of said liniment.

(f) That said liniment is a competent treatment for sciatica, neuritis, sore throat, chest colds (unless limited to pains and soreness caused by colds), coughs, or "athlete's foot."

(g) That by the application of said liniment "athlete's foot" can be prevented.

(h) That said liniment will penetrate the flesh.

(i) That any ingredient of said liniment is more powerful than the "U. S. Government germicidal standard."

It is also stipulated and agreed that if the said Ham-lins Wizard Oil 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 16, 1934.)

0701. Vendor-Advertiser—Embroidery Materials.—The Angora Co., Hoboken, N. J., vendor-advertiser, is engaged in selling embroidery materials and in advertising represented:

FEMALE HELP WANTED

LADIES: Make \$12 dozen embroidering scarfs; experience unnecessary; write for particulars. Angora L, 68 Hudson, Hoboken, N. J.

Embroidery scarfs or pillow tops in your own home can net you \$12 to \$15 per dozen. The work is plain and no experience is required.

Before we go any further we want to emphasize the fact that there is absolutely no necessity for you to have experience in order to start this work. It makes very little difference whether or not you have ever done embroidery work before. With our complete instructions which we are herewith supplying you—you cannot help but do the work easily, and soon it becomes a mere play.

By engaging yourself in this profitable, all year-round work, it will not be necessary for you to canvass, not even to sell, if you don't care to. Our plans show you how to dispose of your finished work without Canvassing.

BIG EMBROIDERY COMBINATION SPECIAL

Biggest Bargain Ever Offered

POSITIVELY CANNOT BE DUPLICATED

Save \$\$\$ — This offer is for a Limited—Save \$\$\$ Time Only

Just Imagine—\$4.75 Worth of Quality of Merchandise for ONLY \$2.25

You actually Save \$2.50 on this Combination Offer

Have you ever heard of giving away merchandise practically for nothing! Sounds unbelievable—doesn't it! Well, this is exactly what we are doing. We are going to give you the biggest combination of fine merchandise ever offered—because we want you to go ahead with this work without hesitation * * * So better act quick if you want to get this big offer, for you will never have such an opportunity again. You may be sure of that.

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 purchasers of respondent's goods will earn any amount in excess of the average net earnings of such persons achieved under normal conditions in the due course of business;

(b) That experience is unnecessary in order to make the amounts indicated;

(c) That by inference or direct statement, the respondent has any employment to offer or buys the embroideries, or finds any market for them, until such be the case;

(d) That the value of merchandise offered by respondent is any amount in excess of its actual bona fide market value;

(e) That an offer is for a limited time only and such an opportunity will not be given again, unless an actual time limit is fixed and all remittances received after the termination of such period are returned to the sender.

It is also stipulated and agreed that if the said William K. Lebowitz 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. (July 16, 1934.)

0702. **Publisher—Feminine Hygiene Preparation.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of a feminine 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. (July 20, 1934.)

0703. **Publisher—Feminine Hygiene Preparation.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a feminine 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. (July 20, 1934.)

0704. **Vendor-Advertiser—Doughnut Machines.**—The Food Display Machine Corporation, Chicago, Ill., vendor-advertiser, is engaged in selling Doughnut Machines and in advertising represented:

A DOUBLE BARRELED MONEY MAKER

\$112.00 last Saturday. We have been busy operating our Brown Bobby machines. On last Saturday, we sold \$112.00 worth * * * (later) we sold \$157.00 worth today * * *.

How any man or woman (or a husband and wife working together) can make money (right in the kitchen at home).

No canvassing (stores do your selling for you) no waiting (start making money the first hour) no studying (experience absolutely not needed) no failures (a marvelous machine does it all, electrically).

Folks eat three or four times as many Brown Bobbys as they ever ate of the old time "sinkers."

\$7.20 spent for supplies brings back \$21.60. A mark-up of 300%. \$7.20 will purchase enough raw materials to make 120 dozen Brown Bobbys. Fifteen to twenty stores will easily sell 120 dozen a day. Even if you sell entirely at wholesale, spending your time in manufacturing only, you can make up to \$86.00 a week on one machine for every day your profit is \$14.40.

Stay at home and make \$15.00 a day.

Another \$10.00 for a few evening calls.

Inquiries are coming from all over the country from people who wish to start Brown Bobby business in neighboring cities. Once your business is established a few calls in the evening on other prospects—a demonstration with your machine—and you have made a sale that can net you from \$10.00 to \$20.00. The big steady money is in running the business and supplying Brown Bobbys, but there is a substantial extra income offered to every operator through the sale of equipment to others.

Winther of Chicago says: "Up to date I have been making Brown Bobbys for eight months, and have a very fine little business which has averaged over \$200.00 a month for the entire period. I expect more, as my territory is expanding and demand constantly increasing."

Mrs. Sheetz of Stockton writes: "I have been able, through the baking and sale of these triangular shaped doughnuts, to buy all the groceries for a family of six, keep myself and children in clothes and spending money, and to accumulate a neat little bank account. I expect that bank account to complete the education of my four children."

Tom Minch sold Brown Bobbys and also sold machines. He writes: "I succeeded from the first day. The first three months I made over \$3,000.00—more money than I ever thought I could make in my whole life."

Macauley of Indiana says: "Need more Brown Bobby equipment. My partner left last week to open up another shop. In five weeks time we have developed a business that is paying \$45.00 a day clear profit."

Mrs. DAWLEY: "The orders are getting way ahead of me. Cleared \$85.00 net profit in four weeks operating from my kitchen in spare time."

TOO GOOD TO BE TRUE

These are only a few of actual records. Scores more like them if space permitted. Inexperienced people from every walk of life have made such good money at once in the Brown Bobby Greaseless Doughnut business that their true records are so startling that exaggeration is unnecessary.

Idly I fingered thru the pages of a magazine and saw an advertisement telling how women in their spare time and at home were making \$15.00 to \$50.00 a week supplying the trade with Brown Bobby greaseless doughnuts.

Inside of three weeks our little home business had grown to the point where he quit his job at the factory to devote all his time to Brown Bobbys. That was just a few months ago. Now we are dissatisfied at less than \$150.00 a week.

Women interested in learning more about the Brown Bobby Plan are invited to write in for details as to how they can make \$15.00 to \$50.00 in their spare time without interfering with their housework. Just mail the coupon.

Here's an amazing new business that pays up to \$1,000 a month.

Surprising as it may sound, we actually put you in a business, with the first day's profits often running from \$18 to \$55. \$350 to \$600 the first month is not unusual for ambitious men.

Now, almost incredible as it may sound, \$400 to \$1,000 a month is possible in even the smallest cities.

You can make up to \$85 a week in this amazing new business!

In business 5 weeks—now making profits of \$45 a day. In five weeks' time, my partner and I have built up our business and are enjoying profits of over \$45 a day.

\$3,000 in 3 months for Tom Minch.

"More money than I ever thought of making in my life", writes Tom Minch, a few weeks after I set him up in a Brown Bobby business.

Later on he wrote again:

"My business has been a success from the very first day * * * I am on the way to make a fortune."

I will get you started in your locality the same as I started Tom Minch in his. Wouldn't you like to be in a business that paid up to \$1,000 a month?

Think of it! A business of your very own—that you can operate in full time or spare time—right in your own home—and that pays you up to \$85 or more a week—all for an amount so small that you may be able to pay for everything out of your first couple of weeks profits.

\$10 a day very easy * * * "I find it very easy to clear \$10 a day profit."

Every time you spend 6¢ you make 12¢ profit! Or \$14.40 a day.

A form letter is sent to the prospect which purports to be a personal message in the handwriting of the president of respondent company, offering a demonstrator machine for half price, that just happens to be available, with others negotiating for its purchase, etc.

At any rate, Lavelly got started and made good from the very first day. He's now operating 4 machines and his dally earnings run around \$20. How would you like to be making that much—day in and day out—in times like these.

One woman sold out her Brown Bobby business shortly after she started for \$1,100.00 cash!

NOW I'LL BE YOUR PARTNER

* * * In a Business that Pays up to \$85 a week

All you do is send me a \$15 deposit and back comes your complete equipment and full detailed instructions so you can start right in making up to \$85 a week.

Every day you stay out of it, it is costing you real money. Every day you delay starting is just like taking a ten dollar bill out of your pocket and throwing it away. The point I make is this. You are paying for a Brown Bobby business every seven days, in the profits you are losing. Why not decide now to get *started* and make this \$10.00 a day net profit for *yourself*?

How would you like to trade places with Mrs. Iota Blanton, who made \$400 in 36 days in her Brown Bobby business?

Or with Tom Minch, who cleared \$3,000 in 3 months?

Or with Mrs. Brown who says \$10 a day profit is easy—or with Wm. Goodwin who sold \$157 worth of Brown Bobbys in one day—or with Holger Nybo, who nets \$15 to \$18 every Saturday—or with Mrs. Wilma Miller, who was offered \$1,100.00 for her Brown Bobby business shortly after she started it?

Well, you don't need to envy these people—and you don't have to change places with them in order to make the big money they are making.

Because no matter who you are—no matter where you live, in small town, city, or country—no matter what your age, education, or experience has been—I will show you how to get started in a Brown Bobby business for yourself and give you the opportunity to make as much money as the best of them are making.

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 "any" man or woman can make money in the kitchen at home, with Brown Bobbies;

(b) That the manufacture and sale of Brown Bobbies involves no canvassing, no waiting, no studying, and no failures;

(c) That persons eat 3 or 4 times as many Brown Bobbies as they ever ate of ordinary doughnuts;

(d) That \$21.60 is a "300 percent mark-up from \$7.20;

(e) That the profits in 7 days time will pay for a Brown Bobby business;

(f) That no matter who you are, where you live, what your age, education, or experience, you have an opportunity, with Brown Bobbies, "to make as much money as the best of them;"

(g) That respondent's president will "be your partner" in your Brown Bobby business, unless and until such be a fact; and any other claims or assertions of like import.

Respondent further stipulates and agrees, in soliciting the purchase of its products in interstate commerce:

(h) That respondent will not make unmodified representations or claims of earnings or profits of customers in excess of the average full-time earnings of respondent's customers achieved under normal conditions in the due course of business;

(i) 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 customers under normal conditions in due course of business;

(j) 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 customers under normal conditions in the due course of business; and

(k) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings or profits, 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 or profits.

Respondent also agrees to cease and desist from sending to prospects form or general letters that indicate by appearance or context that they are personal communications.

It is also stipulated and agreed that if the said Food Display Machine 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. (July 23, 1934.)

0705. Vendor-Advertiser—Rheumatic Treatment.—Arnoldrug Products, Inc., Los Angeles, Calif., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Arnold's Rheumatic Capsules" and in advertising represented:

RECOVERS FROM ARTHRITIS

Miss Eva Tanguay, stage celebrity and famous "I Don't Care" girl, whose stage career was abruptly ended when she became the victim of a crippling attack of arthritis, tells how she overcame her crippled condition and has now been restored to an active life.

BELIEVED IN FOUR DAYS

After taking these capsules for four days only I was enabled to rise from a sitting or reclining position. I could use my hands almost as good as ever. I could walk freely without assistance and without having to drag one leg after me, as had been my custom. Continuing to use Arnold's Rhumatone capsules I have become so completely restored to my former activities that I am now planning a reappearance on the stage. In my belief, my recovery was due to one thing and to one thing alone—Arnold's Rhumatone capsules. They are a God-sent remedy to sufferers from arthritis.

Discovered by a Los Angeles druggist.

An amazing new remedy for the treatment of

Rheumatism
Arthritis
Lumbago
Neuritis
Gout.

A NEW DEVELOPMENT

in the treatment of ailment of rheumatic nature * * * a greatly needed treatment for rheumatic disorders has been disclosed to suffering multitudes.

The cause of rheumatism in its many forms is considered by leading authorities as being due to accumulation of excess uric acid in the system.

About ten years ago, in 1923, I began to search for some remedy that would successfully combat the dreaded rheumatic ailments.

Throughout these several years I had done nothing but observe and study. Now, with all this information and results at hand I compounded my formula.

* * * He stated that his condition was so bad that he had been confined to a hospital bed for seven weeks with little relief resulting, and at times now was in such great agony that the neighbors could hear him scream. At the end of three weeks, following the use of Arnold's capsules, Mr. Jordan reported that he had returned to work.

* * * Realizing that I had found the long-sought answer to the problem of rheumatic ailments.

77 YEARS OF AGE HE TELLS HOW LUMBAGO DISAPPEARED IN 3 DAYS

I had a severe attack of lumbago so bad that I could not bend over, and after taking Arnold's Rhumatone capsules for only three days, find the lumbago ended and the pain all gone.

SUFFERED FOR YEARS WITH INFLAMMATORY RHEUMATISM

Regains Health in One Week

For about 1½ years I suffered from what doctors informed me was a severe case of Inflammatory Rheumatism.

* * * One day a friend told me of Arnold's Rhumatone capsules. I bought some and after using them for two weeks I was an entirely new woman. I can now walk a distance of 3 miles without any ill effects. I feel that I am completely relieved and give full credit to your very remarkable capsules.

KEPT FROM WORK DUE TO RHEUMATISM NOW CAN HARVEST HIS CROP

Since October 1929 I have suffered the pains of neuritis until at times it seemed I would lose my mind.

One morning I found a handbill in our mail box announcing a remedy for my ailment from the Arnold Drug Co. Gathering up my crutches I hobbled to your store. Hobbling back home and to bed I began taking the capsules as directed. * * * At the end of two weeks I could go without my crutches. Continuing to take the capsules, the third week I went to work again and have continued to do so ever since.

SUFFERER FROM ARTHRITIS TELLS OF RECOVERY IN ONE WEEK

Shortly before Christmas 1931 a very severe case of rheumatism started in my system. At first I noticed this in my arms and later the condition extended to my hands which became swollen and useless to me.

In a few weeks my hips were attacked and I became almost helpless.

At last I heard of Arnold's Rhumatone capsules and, although thinking it just another futile attempt, I tried them. There was nothing I could do but keep on trying.

After I could raise my arms above my head, I could rise and sit unaided, I could comb my hair and use my hands almost as well as I ever could.

FOR FIRST TIME BELIEVES RHEUMATISM HAS BEEN OVERCOME

I wish to congratulate you upon your discovery of a wonderful treatment for rheumatism.

After taking one box of Arnold's Rhumatone capsules the pain has disappeared and now feel for the first time that I have rid myself of rheumatism.

I sing praise to Arnold's Rhumatone capsules. I will recommend them to all who are afflicted with rheumatism. They are the one and only medicine for rheumatic ailments.

The action of Arnold's Rhumatone capsules is to eliminate from the body the acids and other foreign matters that cause pain.

This elimination takes place through the bowels, the kidneys, and through the pores of the skin. In many cases this process of elimination will begin after only a few doses of Arnold's Rhumatone capsules.

* * * Arnold's Rhumatone capsules are a basic treatment designed to eliminate the cause; you may therefore expect relief in any of the forms of rheumatism, such as arthritis, neuritis, lumbago and sciatica.

For this reason, regardless of how severe your case or how long standing, Arnold's Rhumatone capsules should be found of great benefit.

ABSOLUTELY HARMLESS

Arnold's Rhumatone capsules are not manufactured or designed to temporarily cover up pain. There is no drug in them that will harm you * * *.

* * * The stiff, crippled joints or arthritis, if treated before they are firmly ankylosed, yield readily to Arnold's Rhumatone capsules.

And you can be assured that your ailment should respond to Arnold's Rhumatone capsules in the same successful manner as have the ailments of the sufferers who have received such remarkable results.

To further our assurance that you will succeed in overcoming your trouble.

DIURETIC—INCREASES URINARY SECRETIONS

URIC ACID SOLVENT AND ELIMINANT

* * * Absolute riddance of uric acid and other accumulations can be accomplished only through continuity of treatment.

* * * to receive permanent, lasting results you positively must persist in the use of Arnold's capsules.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is a competent treatment for rheumatism, or ailments of a rheumatic nature, unless such representation is qualified to indicate that the efficacy of the preparation is limited to temporary relief in cases of such ailments due to excess uric acid.

(b) That said preparation is a competent treatment for arthritis, lumbago, or neuritis.

(c) That all forms of rheumatism are due to an accumulation of excess uric acid.

(d) That said preparation is recommended for all persons afflicted with rheumatism.

(e) That said preparation is the only medicine for rheumatic ailments.

(f) That said preparation will eliminate from the body acids and other foreign matter that cause pain.

(g) That prospective users may expect the same beneficial results as those represented in published testimonials.

(h) That the use of said preparation will cause an absolute riddance of uric acid or other accumulations.

(i) That the results from the use of said preparations are permanent or lasting.

(j) That said preparation is a diuretic or eliminant.

(k) That said preparation acts upon the kidneys or the bowels.

(l) That said preparation is harmless unless and until cinchophen is eliminated from the preparation; or the quantity thereof is reduced to such an extent as is considered by competent medical authority to be harmless in the dosage recommended by respondent.

(m) That said preparation was "discovered" by a Los Angeles druggist, or that it is a new development.

It is also stipulated and agreed that if the said Arnoldrug Products, 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 23, 1934.)

0706. Vendor-Advertiser — Medicinal Salts. — The Mineral Valley Water Co., Mineral Wells, Tex., vendor-advertiser, is engaged in selling Medicinal Salt designated as "Nature's Crystals" and in advertising represented:

* * * it is a proven fact that the Crystals have given beneficial results in the treatment of rheumatism, stomach, liver and gall bladder trouble, diabetes, nervousness, high blood pressure * * *.

For use during the day, in cases of indigestion, stomach trouble, bad complexion, backaches, rheumatism, arthritis, liver trouble, cold, flu, etc. * * *.

For cases of nervousness, colitis, diabetes, kidney and bladder trouble, high blood pressure, neuritis, acidity, etc. * * *.

Rheumatism—Take one teaspoonful of Crystals in a large glass of water * * *.

Diabetes—Start the treatment with the warm morning drink * * *.

Diabetes—

* * * I was troubled with Diabetes for eight years; used Insulin every day during this time until I began taking Nature's Crystals, and will say I have used no Insulin or any other medicine since."

I spent several thousand dollars with specialists and hospitals in the treatment for diabetes. * * * a friend referred me to Nature's Crystals and in two hours I found relief.

Rheumatism—

I have been taking Nature's Crystals for six months, and they have given me permanent relief from my rheumatism.

I am writing to tell you I have been benefited very much by taking Nature's Crystals. I have suffered from rheumatism and constipation, and now both are practically gone.

Kidney trouble—

I want to tell you how good your Nature's Crystals are. A year ago I could not walk a step, but they have put me on my feet.

I have been troubled with kidney trouble for a long time * * * but after a friend of mine sent me Nature's Crystals I have been permanently relieved.

Stomach trouble—

* * * I have had stomach trouble and have tried everything and believe that if it had not been for the Crystals, I would have been in my grave * * *.

Nature's Crystals is the best treatment I have ever used for severe stomach trouble.

Nature's Crystals added to your drinking water for diabetes, rheumatism * * * stomach and kidney disorders.

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 salt is a competent treatment for any of the following ailments:

| | |
|---------------------|----------------|
| Rheumatism | Bad complexion |
| Stomach trouble | Backache |
| Liver trouble | Arthritis |
| Bladder trouble | Colds |
| Diabetes | Flu |
| Nervousness | Acidity |
| High blood pressure | Kidney trouble |
| Indigestion | |

(b) That any beneficial results that may be obtained from using said medicinal salt will be permanent.

(c) That a person having diabetes can discontinue the administration of insulin by using said medicinal salt.

(d) That any person would have died if said medicinal salt had not been used.

It is also stipulated and agreed that if the said Robert S. Luke should ever resume or indulge in any practice violative of the provi-

sions 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. (July 23, 1934.)

0707. Vendor-Advertiser—Hair Colorer.—The Wright Manufacturing Co., St. Paul, Minn., vendor-advertiser, is engaged in selling a hair-coloring preparation designated as "Dr. Olga Schiller's Gray Hair Restorer" and in advertising represented:

GRAY HAIR

Dr. Schiller's Restorer Does Away With Dyes

Scientific method brings back natural color permanently * * *

Our secret formula does away absolutely, with harmful dyes.

First of all, I want to impress upon you the fact that this restorer is *not a hair dye*.

* * * Dr. Olga Schiller's method absolutely assures you of bringing back the natural color and loveliness of your hair.

The application of Dr. Olga Schiller's Color Restorer is very simple, merely brush the liquid through your hair. It will gradually restore its natural color.

It works fine on the roots of dyed hair.

* * * this new, scientific, method that does away with dyes absolutely.

Here is a new idea—a new method of restoring the natural color to the hair.

Dr. Olga Schiller's Hair Color Restorer is recognized as the safest, surest, quickest method of bringing back the natural color to the hair. Physicians have found it so pure and free from injurious substances (found in dyes) * * *.

It brings back the natural luster and sheen to your hair.

Bring back the natural color to your hair—now, the safest, surest way.

Use Dr. Olga Schiller's method.

Gray hair restored without dye.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is not a dye or that it does away with dyes.

(b) That said preparation will bring back or restore the original or former color to gray hair.

(c) That the color produced by the application of said preparation is permanent.

(d) That said preparation is a color restorer.

(e) That said preparation will bring back, restore, or produce a natural color, natural luster, or natural sheen.

(f) That said preparation will "work upon" or affect the roots of the hair.

(g) That said preparation is safe or harmless.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparation to cease and desist from using the terms "restorer" or "color restorer" on labels or otherwise to designate or describe said product.

It is also stipulated and agreed that if the said Miss A. Wright 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 her in the trial of the complaint which the Commission may issue. (July 23, 1934.)

0708. Vendor-Advertiser—Liquid Cement.—Lux-Visel, Inc., Elkhart, Ind., vendor-advertiser, is engaged in selling a liquid cement designated "Metallic-X" and in advertising represented:

METALLIC LIQUID

Binds all kinds of materials together as if welded.

An amazing chemical discovery.

Joins all kinds of solid materials as if one piece.

Not a glue, cement, or solder, yet does the work of all three.

Permanent, will not crack, soften, or dry out.

Metallic-X mends anything.

Binds all kinds of materials, including fabrics, leather, etc., together as if one piece.

Easier to use and stronger than glues, liquid cements, or solders.

Has actually been successfully used to repair cracked cylinder heads and for many other equally difficult jobs.

Unharmful by heat, water, oil, acids, or atmospheric conditions.

Agents up to \$15-\$50 in a day.

Make up to \$150 in a week—new way.

\$150 to \$175 a week is relatively easy.

Your chance to make up to \$200 in a week.

Tremendous earnings either way—up to \$20 and \$30 in a day—\$250 and up in a week.

Blodgett (Calif.) over \$1,000 first month.

Coulter (N. Y.) made \$1,335.50 first two months.

Agents-distributors make up to \$175 in a week.

Agents-distributors up to \$200 in a week easy.

Make \$15 to \$50 in a day.

Agents—\$15 to \$50 in a day.

Agents-distributors make up to \$25-\$30 in a day.

Added earnings through sales to homes bring \$150 to \$180 or more weekly well within reach of any man or woman.

\$1.00 will pay you up to \$10 to \$25 your first day.

Then we know you will * * * make up to \$50 to \$200 a week as our agent or distributor.

Mr. Vlehman, Metallic-X distributor in Chicago, did \$23,000 in business his first 3 months * * * expects to make \$20,000 this year.

Pays up to \$40 or \$50 in a day without selling!

Even the smallest territory should yield at least 200 live dealers and, if you average only 6 tubes a week from each one, you are still making nearly \$10,000 a year!

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 adhesive is either a metallic liquid or a liquid metal, or that it is an amazing chemical discovery;

(b) That said adhesive binds all kinds of materials as if welded, or joins all solid materials as if one piece, in all cases;

(c) That said adhesive is not a cement, or that it does the work of solder; or that it mends "anything";

(d) That repairs made by the use of said adhesive are permanent;

(e) That said adhesive is either easier to use or stronger than liquid cements or solders;

(f) That said adhesive has been successfully used to repair cracked cylinder heads and/or many other equally difficult jobs;

(g) That the effectiveness of said adhesive is not lessened by either heat or water or oil or acids or atmospheric conditions;

(h) 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;

(i) 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;

(j) 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

(k) 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 Lux-Visel, 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 25, 1934.)

0709. **Publisher—Medicinal Preparation.**—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 a medicinal preparation designated as "Father John's Medicine."

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 25, 1934.)

0710. **Publisher—Medicinal Preparation.**—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 a medicinal preparation designated as "Father John's Medicine."

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 25, 1934.)

0711. **Publisher—Beauty Preparations.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of toilet and beauty 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.

ent 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 25, 1934.)

0712. **Publisher—Cold Treatment.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a treatment for colds.

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 25, 1934.)

0713. —**Publisher—Hair Treatment.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a hair treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (July 25, 1934.)

0714. **Vendor-Advertiser—Medicinal treatment.**—Treatine Laboratories, Inc., Columbus, O., vendor-advertiser, is engaged in selling a medicinal preparation designated "Treatine" and in advertising represented:

Prepared Only by Treatine Laboratories

SAVE YOUR TONSILS—TRY TREATINE

* * * Try to avoid an operation by treating the tonsils with "Treatine."

AVOID PAINFUL TONSIL OPERATION

Again science has prevailed with a new discovery for enlarged or swollen tonsils. Try to avoid a tonsil operation by treating your throat with "Treatine." * * * Also a valuable remedy for sore throat, quinsy, or tonsillitis. * * * Infected tonsils are injurious to your health. Keep your tonsils healthy with "Treatine."

* * * I then tried your "Treatine" and within 24 hours all soreness disappeared and my throat got well and all right * * *.

* * * My tonsils were diseased and I was told that the only relief I could get would be to remove the tonsils. You gave me two sample bottles of "Treatine." I took one bottle and about half of the second bottle. All the inflammation and soreness has gone out of my tonsils, and all the inflammation from the antrums which were affected.

* * * I thoroughly recommend "Treatine" to anyone who has anything wrong with their tonsils or any other pus disease.

I was suffering with a bad case of diseased tonsils for a long time and was treated by several doctors, but without any relief, who informed me that my tonsils must be removed by an operation, or I would never get well.

I was advised to try your medicine "Treatine" and one bottle was delivered to me by one of your representatives and after a few days' treatment I am glad to inform you that all soreness and inflammation left my throat and my tonsils, and have not been bothered since with any throat trouble and I have gained my former weight. * * *

* * * Therefore it gives me great pleasure to recommend "Treatine" as the greatest and best scientific remedy for restoring diseased tonsils to normal healthy condition, and I do not hesitate in recommending it to my friends, in fact many people who have used "Treatine", at my suggestion, have been entirely cured of all throat trouble. * * *

I have experienced a marvelous cure for sore throat and can recommend your "Treatine" to any one suffering from same. * * *

Stops—Sore Throat—Tonsillitis

The much maligned tonsil is an active hormonal organ, whose removal weakens the brain and the function of other vital organs. * * * they have cured goitre and scarlet fever by treating the tonsils.

If goitre and scarlet fever can be corrected by treating the tonsils * * *.

Now, another great American medical physician, after years of research work, knew of the suffering caused by diseased tonsils, discovered a combination of medicine that would be the means of treating the tonsils by medication, that would keep the tonsils healthy, as well as correct the diseased ones, this means a healthy body, free from disease which physicians claim can be attributed to diseased tonsils. * * *

This scientific discovery is registered under the name of "Treatine" and is sole property of the Treatine Laboratories, Inc., of Columbus, Ohio.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is prepared by the respondent.

(b) That tonsils can be saved or a tonsil operation avoided by the use of said preparation.

(c) That said preparation is recommended to anyone who has "anything" wrong with his tonsils.

(d) That the use of said preparation has cured anyone of throat trouble.

(e) That said preparation is a competent treatment for quinsy.

(f) That said preparation is a competent treatment for tonsillitis or sore throat unless such representations are qualified to indicate that the preparation is recommended only for throat irritations or unless such representations are qualified to indicate that the preparation is not recommended for cases of seriously diseased or infected tonsils which may require removal by surgery.

(g) That the use of said preparation will restore diseased tonsils to normal or healthy condition.

(h) That the removal of the tonsils will weaken the brain and the function of other vital organs.

(i) That scarlet fever and goiter can be cured or corrected by treating the tonsils.

(j) That said preparation is a new scientific discovery.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparation in interstate commerce to cease and desist from using the word "laboratories" as a part of its trade name unless and until a laboratory is actually maintained and operated by the respondent.

It is also stipulated and agreed that if the said Treatine 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. (July 31, 1934.)

0715. Publisher—Toilet and Beauty Preparations.—The publisher of a Sunday magazine section 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 a toilet and beauty 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. (July 31, 1934.)

0716. **Publisher—Medicinal Preparation.**—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 a medicinal preparation designated as "Father John's Medicine."

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. (July 31, 1934.)

0717. **Publisher—Medicinal Preparation.**—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 a medicinal preparation designated as "Father John's Medicine."

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 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. (Aug. 3, 1934.)

0718. **Publisher—Medicinal Preparation.**—The publisher of a daily newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading state-

ments, claims, and representations for the manufacturer and vendor of a medicinal preparation designated as "Father John's Medicine."

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. (Aug. 3, 1934.)

0719. Vendor-Advertiser—Resinol Ointment and Soap, Etc.—Resinol Chemical Co., 517 W. Lombard Street, Baltimore, Md., vendor-advertiser, is engaged in selling medicine for treatment of the skin and scalp, and in advertising represented:

HERE'S THE WAY TO HEAL THAT STUBBORN SORE

If you are suffering from an aggravating sore which has resisted the many treatments you have tried, you would probably pay almost any price for relief.

Well, here is relief for you, * * * Just begin today to apply Resinol Ointment. * * * has brought joy to countless people who suffered from varicose ulcers or similar trouble.

MY FACE WAS COVERED WITH PIMPLES

Resinol * * * effective enough for severest cases of eczema.

* * * Use the same Resinol treatment for any itching or irritation anywhere.

* * * No parts too delicate, no surface too irritated for Resinol Ointment to * * * heal."

Whether a tiny pimple or severe eczema * * * piles—for skin ailments generally, use Resinol Ointment.

* * * If your skin is red, rough, or pimply, there is only one way to overcome the annoyance—get rid of the defects. You can do this easily by using Resinol Ointment * * * .

HOW TO CLEAR AWAY PIMPLES

* * * For skin trouble anywhere, use Resinol.

FOR PIMPLES, ECZEMA, PILES

* * * Resinol Ointment prevents infections from becoming serious. * * * .

* * * From the slightest rash to the severest eczema, from a tiny pimple to torturing piles—Resinol Ointment furnishes quick effective relief. * * * .

EVERY PIMPLE GONE!

CLEAR AWAY ECZEMA

Don't be embarrassed by complexion defects. * * * At first sign of skin trouble, use Resinol Ointment. Wherever the itching, whatever the cause, Resinol relieves it quickly. * * * .

ITCHING SCALP DISORDER ENDED

* * * Save yourself the torment, and at the same time save your hair.
 * * * See how quickly the * * * hair stops falling.

DON'T ENDURE TORTURING HEMORRHOIDS

* * * the immediate relief it gives from itching, bleeding, painful piles * * *
 * * * Resinol Ointment is so soothing and healing it can be used safely on the most inflamed parts.

ATHLETE'S FOOT

* * * Prevent spreading. Kill the infection with healing Resinol.
 If you are suffering from a broken varicose vein or some equally painful sore which it seems impossible to heal, begin now to apply Resinol Ointment. * * *

GET RID OF ATHLETE'S FOOT THE EASY WAY

* * * to aid in killing fungus. * * * Then as the Resinol medication works into the pores it kills the infection and hastens the healing. * * *
 * * * You can clear up that pimply skin with Resinol. * * * This simple treatment gets right after pimples and rarely fails to clear away every trace of the eruption. * * *

ATHLETE'S FOOT HEALED IN WEEK

NURSE TELLS HOW TO HEAL ECZEMA

* * * I have used this treatment often and have seen it clear up very stubborn cases of eczema.

ECZEMA SOON HEALED WITH RESINOL OINTMENT

IF YOU WANT RELIEF FROM HEMORRHOIDS

Apply healing Resinol Ointment. * * *

THE BEST WAY TO GET RID OF PIMPLES

RESINOL ENDED INTENSE PAIN AND AWFUL ITCHING

A while ago my leg got red, swollen, and itched terribly. Then it broke out in several places and the pain was intense. I was told varicose veins caused the trouble and I used all kinds of treatments without success. I walked the floor at night in pain. A friend told me he used Resinol Ointment, so I tried it. In two hours I had relief and after using two and one-half large jars, the leg was completely healed.

* * * when suffering from local itching and inflammation due to uric acid, I tried Resinol Ointment. The first application gave me relief and in a short time all the trouble disappeared.

1 JAR RESINOL HEALED SEVERE ECZEMA

More than 35 years ago, when I was a child, I developed a severe case of eczema behind my left ear. In spite of all the remedies used the disease spread rapidly over my head. * * * after using a full jar the affection was entirely healed.

RESINOL QUICKLY RELIEVES SKIN INFECTION

For * * * pimples, boils, from the mildest skin eruption to the severest eczema * * *.

MOTHER OF SIX SAYS RESINOL NEVER FAILS

IF YOU WANT RELIEF FROM HEMORRHOIDS

Apply healing Resinol Ointment. * * *.

NO NEED TO SUFFER FROM ACNE

Don't endure the torment and embarrassment of this unpleasant skin eruption. Even though it is stubborn, and clearing it away seems hopeless, begin today to use Resinol Ointment and Resinol Soap. This simple treatment has brought joy to many sufferers from severest acne. * * *

* * * Where chafing and irritation are present, due to prolonged illness, Resinol Ointment is an ideal application, usually affording relief, even in severe cases.

To relieve acne, athlete's foot, boils, dandruff, eczema, eruptions, facial blemishes, hemorrhoids, hives, piles, pimples, salt rheum, shingles, tetter."

WHEREVER THE ITCHING * * *

WHATEVER THE CAUSE * * *

- * * * rush Resinol Ointment to the rescue!
- * * * Strong and effective enough to relieve severest disorders * * *.
- * * * to relieve skin and scalp troubles * * *.

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 advertising or otherwise:

(a) That any of said products is an adequate treatment for various ulcers, athlete's foot, broken or varicose veins, boils or sores or skin infections, due to internal causes.

(b) That any of said products is an adequate treatment for pimples, acne, or eruptions, unless such representations are limited to those conditions confined to the outer or surface layer of the skin.

(c) That any of said products is an adequate treatment for eczema, piles, hemorrhoids, dandruff, facial blemishes, hives, salt rheum, tetter, or scalp troubles, unless clearly limited to relieve the itching or discomfort caused by the same.

(d) That any of such products should be used for the treatment of "any" itching.

(e) That no parts are too delicate or raw surfaces too irritated for Resinol Ointment to "heal."

(f) That Resinol Ointment is an adequate treatment for "skin ailments generally."

(g) That the use of any of said products will remove "every" pimple.

(h) That any of said products will relieve itching regardless of the cause.

(i) That any of said products will end scalp disorders, stop hair from falling, or save the hair.

(j) That any of said products will relieve intense pain.

(k) That any of said products is an adequate treatment for itching or inflammation due to uric acid.

(l) That Resinol Ointment is effective enough to relieve the "severest disorders."

(m) That any of said products never fails.

and from making any other claims or assertions of like import.

Respondents further stipulate and agree in soliciting the sale of and selling said products in interstate commerce to cease and desist from using, in such a manner as to indicate complete success, the following words or phrases to describe the results that may be expected from the use thereof:—

"Heal"

"Rid"

"Clears Away"

It is also stipulated and agreed that if the said Merville H. Carter, Allen L. Carter, and H. LeRoy Carter 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. (Aug. 6, 1934.)

0720. Vendor-Advertiser—Poultry Remedy.—Dr. Salsbury's Laboratories, Charles City, Iowa, vendor-advertiser, is engaged in selling a treatment for worms in poultry, and in advertising represented:

To get rid of worms in chickens and turkeys you can depend on Kamala-Nicotine caps. They contain kamala and nicotine, the recognized most effective drugs for the removal of tape, round, and pin worms.

The most popular method of treating for worms, especially when birds are infested with both round and tape worms, has been the use of the combination of nicotine and kamala in one capsule.

Dr. Salsbury's Kamala-Nicotine caps. The combination of nicotine and kamala is very popular as a combined wormer.

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) Directly or by inference that said poultry worm medicine is competent treatment for poultry infested with tape worms or pin worms.

(b) That said poultry worm medicine is competent treatment for poultry infested with worms unless such representations are limited to round worms.

It is also stipulated and agreed that if the said Dr. Salsbury's Poultry Service 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. (Aug. 6, 1934.)

0721. **Publisher—Hosiery.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of hosiery.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisement; 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. (Aug. 10, 1934.)

0722. **Publisher—Display Sales Cards.**—The publisher of a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of display sales 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. (Aug. 10, 1934.)

0723. Vendor-Advertiser—Radios.—The Lipault Corporation, Philadelphia, Pa., vendor-advertiser, is engaged in selling RCA Victor radios by means of a punchboard sales plan, and in advertising represented:

RCA—Victor—\$25.00 radios given away * * * Most amazing money maker you ever handled * * * Brings in money like magic * * * 15¢ earns \$8.20 profit.

Give away these genuine RCA Victor \$27.50 "Carryette" radios * * * Make \$10 profit on every deal!

We have distributors and operators who always have 200 agents engaged in this work and usually make 50 or more complete sales each week. The total income of each salescard is \$34.25. The cost to you for the salescard and full size radio illustration is 15¢ complete. The Special price to you for the "RCA Victor" \$27.50 "Carryette" Radio is only \$12.80. As each salescard gives away two of these wonderful radio sets, your profit would be \$8.50 on every salescard disposed of by your agents. You can readily see that even with 50 agents working and selling only one salescard each per week, which is not exceptional, your net profits per week would exceed \$400.00. Just stop and think for a moment! For every 15¢ you invest you stand to make the astounding profit of \$8.50.

The plan of sale used is as follows:

Salescards, similar to punchboards, are sold for 15¢ each. The card contains 120 girls' names. Chances sell for from 1¢ to 35¢ each and total \$34.25. The lucky winner gets a radio free. The solicitor selling the chances gets a radio for his work. The two radios cost the dealer \$12.80 each and the punchboard 15¢, leaving him \$8.50 profit on each card sold out by his solicitors. Fifteen chances on the punchboard are free, leaving 105 to be sold. Two get radios and the rest get nothing.

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) Not to 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) Not to 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.

Respondent further stipulates to cease and desist from distributing to prospective agents or salespersons any sales cards or other device which may be used in conducting a lottery for the disposal of said merchandise.

It is also stipulated and agreed that if the said Lipault 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. (Aug. 11, 1934.)

0724. Vendor-Advertiser—Counter Display Goods.—The Process Corporation, a corporation advertising as Pro-Co-Pax, Chicago, Ill., vendor-advertiser, is engaged in selling counter display goods under the designation of "Pro-Co-Pax Products", and in advertising represented:

A wonderful opportunity for up to \$70 a week for you.

Sell Pro-Co-Pax counter merchandise to retailers.

A route of only 50 locations can pay you as much as \$70 a week, steady, regular, week-in-week-out income—an income that grows day by day.

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 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. 11, 1934.)

0725. Vendor-Advertiser—Eyelash and Eyebrow Treatment.—The Maybelline Co., Chicago, Ill., vendor-advertiser, is engaged in selling “Maybelline”, a treatment for the eyelashes and eyebrows, and in advertising represented:

Nourishing and stimulating * * *

Maybelline Eyelash grower * * * keeps lashes in soft, healthy condition and stimulates their growth * * *.

* * * stimulates the natural growth of the eyelashes and eyebrows * * *.

* * * It is composed of pure and beneficial ingredients that stimulate and nourish the growth of the lashes * * *.

To stimulate the natural growth of your lashes, apply the delightful Maybelline Eyelash Grower * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation will grow or stimulate the growth of eyelashes or eyebrows.

(b) That said preparation is nourishing or that it will nourish eyelashes.

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparation in interstate commerce to cease and desist from representing, or designating it as an “eyelash grower.”

It is also stipulated and agreed that if the said Thomas L. Williams 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. 24, 1934.)

0726. Vendor-Advertiser—Poultry Worm Medicines.—I. D. Russell Co., Kansas City, Mo., vendor-advertiser, is engaged in selling “WormR Tablets” and “Korum” for treatment of worms in poultry, and in advertising represented:

RUSSELL'S WORM TABLETS 1c EA.

Russell's WormR tablets have proven their worth in every test. They are high in quality—economical in price—absolutely dependable—easy to use and expel round and tape worms.

To guard baby chicks against common ills—simple diarrhea, etc.—to assist them in digesting the so-called undigestible egg yolk, we strongly recommend Korum, * * * It is a germ killer.

* * * Get them from one of our 30,000 dealers.

If your fowls are bothered with germs or intestinal diseases use Korum.

* * * Russell's WormR Tablets is the worm treatment to use.

Russell's WormR Tablets have proven their worth in every extensive test.

* * * dependable in the treatment of round and tape worms.

* * * expel round and tape worms * * *.

SPECIAL FOR WORMS

Russell's WormR Tablets are for Individual treatment—the best way to get worms.

According to our records on file 999 users out of every 1,000 have been satisfied.

* * * Korum aids in getting the intestines in a condition so worms will be expelled easily and it aids in healing walls of the intestines. * * *

* * * If you will use the WormR Powder treatment each month throughout the year you will keep worms under better control.

* * * Korum kills germs, has tonic properties * * * Korum when used proves very helpful to poultry raisers everywhere in the treatment of germ and intestinal diseases.

Use WormR Tablets when fowls are badly infested with worms.

THE OLD STORY ABOUT WORMS

AND THE MODERN METHOD

Of How to Get Rid of Them at a Very Small Cost

Most every flock has round, pin, or tape worms. If you are doubtful about the condition of your flock, pick out one, two, or three hens from the flock. Place a WormR Tablet down the throat of each fowl. Coop the birds for from twelve to fourteen hours, and you will soon know whether your flock is bothered with worms. The worms will come out in the droppings * * *.

It is to every poultry raiser's advantage to rid his flock of worms with I. D. Russell's WormR Tablets. They rid the flock of worms * * *.

Rid your poultry of worms at once * * *.

* * * This makes us want to stock your WormR Capsules, for in them we believe that we have a capsule that will get the worms * * *.

Korum—Protect fowls against roup, diarrhea, and intestinal diseases.

* * * It is a tonic and germ killer, an aid in protecting the fowl from intestinal and germ diseases.

WormR (Tablets) and WormR (Powder)—gets round and tape worms.

Russell's WormR is guaranteed to rid your flock of worms * * *.

* * * Control the large round and tape worms with Russell's WormR.

* * * Simply get WormR—for Worms; Korum—for all germ diseases

* * *.

* * * I have used one 16-oz. bottle of your remedy "Korum" and I think it is about the best remedy for roup I ever used * * *.

SAVE YOUR FOWLS FROM ROUP—DIARRHEA—CHLOREA AND OTHER CONTAGIOUS GERM DISEASES

WORMR TABLETS AND POWDER

There are two recognized methods to worm fowls—one is a tablet and the other is a powder. The WormR Powder is all right for fowls that are in fair condition and eat readily. The WormR Tablet is best for fowls that are badly infested.

* * * Many of the outstanding breeders use and recommend Korum in the prevention and treatment of simple diarrhea, intestinal disorders, roup, etc.

* * * WormR to expell 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 either WormR tablets or WormR powder is a competent treatment for poultry infested with tape worms or pin worms.

(b) That either WormR tablets or WormR powder is a competent treatment for poultry infested with worms other than round worms.

(c) That the use of either WormR tablets or WormR powder will rid poultry of worms.

(d) That the preparation, Korum, will kill germs, aid in the expelling of worms, unless offered as an aid in connection with worm medicines, or aid in protecting fowls from intestinal or germ diseases, unless the formula of the preparation is changed, in which case all representations will be in accordance with facts that can be established by competent evidence.

(e) That Korum is a competent treatment for roup, diarrhea, unless limited to simple diarrhea, chlorea, contagious diseases, germ diseases, intestinal diseases, or that it will protect poultry from those ailments, unless the formula of the preparation is changed, in which case all representations will be in accordance with facts that can be established by competent evidence.

(f) That a definite proportion of users of respondent's products have been satisfied unless the respondent has reports from all users of his products.

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from:

1. Describing or designating any of his preparations as "WormR" unless accompanied by apt and adequate words equally conspicuous in immediate conjunction therewith clearly indicating that the preparation is effective for the treatment of poultry infested with round worms only.

2. Publishing advertisements containing statements in which the number of respondent's dealers is exaggerated.

It is also stipulated and agreed that if the said I. D. Russell should ever resume or indulge in any practice violative of the pro-

visions 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. 4, 1934.)

0727. Vendor-Advertiser—Deodorant and Moth Preventative.—The Puro Co., Inc., St. Louis, Mo., vendor-advertiser, is engaged in selling "Puro", a deodorant and moth preventive, and in advertising represented:

Pays men and women up to \$10 and \$15 in a day * * * No wonder repeat business comes automatically, paying agents up to \$10 and \$15 in a day from the very start.

Sells for only 25¢—yet pays men and women \$10 to \$15 in a day!

Just hang up Mystery Card and earn up to \$50 and \$75 in a week!

An instant hit with housewives everywhere—agents sell 4 to 12 at a time—automatic repeats on every sale—\$15 to \$25 a day easy—distributors up to \$3,000 a year! Write today for description and sensational big-money plans.

Pays agents up to \$10-\$15 in a day! Distributors—crew managers—district managers \$5,000 to \$6,000 a year easy! Smallest Puro territory paid distributor \$4,000 last year and others at rate of \$4,500 to \$6,000 a year. Check special square of coupon—if you can qualify at once as a distributor.

Earn up to \$50 and \$75 in a week.

You too can have an income like these:

\$5,200 a year, \$4,000 in 8 months, \$70 a week, \$3 an hour.

Here are a few typical cases of earnings: Agents, M. S. Ledell (N. Y.) \$12 a day; T. Clark (Mass.) \$10 a day; J. Hill (Ohio) \$11.75 a day; distributors, A. K. Karchmer (Calif.) \$5,200 a year; A. DeCarter (Mass.) \$6,000 a year! Mail coupon today for full information.

FORTUNES FOR AGENTS

This man made \$6,000 last year.

A. DeCarter (above) is one of many whose amazing earnings demonstrate the outstanding superiority of Puro as a money-making proposition. And don't forget that this \$6,000 means net earnings over a whole year! Equally sensational are the earnings of A. K. Karchmer (Cal.), who has averaged around \$150 a week for the past 2 years—S. Bickford (Ohio), \$1,560.00 in 4 months—M. Meyers, \$4,000.00 in eight months—H. L. Kunkle (Colo.), with \$325 to \$494 a month, and scores of others. Puro offers the same opportunity to you as they started with.

No wonder both men and women are making money as never before—\$10 to \$15 a day and over for beginners with distributors averaging \$4,000 to \$5,000 a year and more! Here's your chance for an independent business—profitable from the very start with an unlimited future.

And the pay—oh, the pay!! Why, men and women working half time or less make up to \$100 and \$150 a month, while full-time workers frequently run as high as \$2.50 to \$3.00 an hour.

Agents—\$5 to \$15 a day easy—distributors up to \$6,000 a year!

MEN—WOMEN!

\$5,000 a Year

\$300 to \$500 in a Month

\$8 to \$15 in a Day. \$75 to \$125 in a Week

OPEN THIS DOOR TO

Happiness, Prosperity, Ease, Independence, Unlimited Income!

A. K. Karchmer (above), Puro ace of California, cleared \$5,200 last year; M. Meyer (Mich.) cleaned up \$4,000 in 8 months; dozens of others are doing as well or better. Start now with Puro. * * *

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 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 it in the trial of the complaint which the Commission may issue. (Sept. 5, 1934.)

0728. Vendor-Advertiser—Preparations for Catarrh, Colds, Etc.—An alleged health specialist, Boston, Mass., vendor-advertiser, is engaged in selling various preparations for the treatment of catarrh, colds, etc., and in advertising represented:

WINTER CATARRH!

Do you have frequent nose-running, colds with headaches, or mucus in the throat?

Do your ears have a stuffed-up feeling or have annoying sounds?

You may think these troubles only stubborn colds that will soon disappear and not realize that you are getting more run down. The fact that you have catarrh now proves that the inflammation is deep-seated. Send for free advice from a specialist who has successfully employed an individual home-treatment method for catarrh for over forty years.

Catarrhal Head Troubles?

Nasal and Throat Catarrh?

Deafness—Ear Noises?

Send for free advice from a specialist who has successfully employed an individual home-treatment method for catarrh for over forty years.

Don't neglect catarrh now!

A study of your case will then be made and results written you. * * *

It seems to get at the root of the disease.

Free from catarrhal trouble for good.

If you have catarrh of the nose and throat, catarrhal deafness, ear noises, head sounds, catarrhal head trouble, you need this unique method.

Do not suffer with catarrhal head troubles * * *

Heads, noses, throats and ears freed from catarrh.

To remove the cause and not simply give relief for the time being is our aim. It is the only way to handle chronic trouble like yours. You need thorough individual work to rid you of your catarrhal troubles.

Our germicide—an ointment for lubricating and clearing the nostrils * * *

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 any of said preparations is a competent treatment for catarrh;

(b) That any of said preparations is a competent treatment for deafness or head noises;

(c) That any of said preparations is a germicide;

(d) That any of said preparations gets at the root of any of the diseases hereinbefore mentioned;

(e) That any of said preparations is a competent treatment for chronic troubles;

(f) That any medical advice furnished by respondent is free unless such advice is furnished regardless of whether prospective customer purchases the preparations sold by respondent;

(g) That respondent's method of treatment is unique.

It is further stipulated and agreed that the respondent will not represent by letters purporting to be signed by him or otherwise that medical advice will be given or a case studied by respondent unless such study and advice are given by the respondent personally.

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. 5, 1934.)

0729. Vendor-Advertiser—Hair Dye.—Cai-Jai Co., 29 West Thirty-fourth Street, New York, vendor-advertiser, is engaged in selling "Gray Out", an alleged hair dye, and in advertising represented:

* * * it has kept my hair, which was black before it turned gray, in its original black color. It has also cured my dandruff condition.

* * * it has brought back the natural color * * *

NOT AN INJURIOUS DYE

BRINGS BACK YOUTHFUL COLOR TO GRAY HAIR

* * * Thus, a person who has brown hair turned silver by age, by the use of GRAY-OUT, may impart to the Gray hair the shade desired. If a person has once had black hair he will assume that shade again.

* * * It can be used without the fear of harmful effects to either hair or scalp.

Use a tonic free of injurious ingredients and produce the desired shade of the hair with safety. * * *

GRAY-OUT brings back original color to gray hair * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise—

(a) That said preparation is not a dye.

(b) That said preparation is not injurious.

(c) That the use of said preparation will impart to gray hair its original or former color or shade.

(d) That the use of said preparation will "bring back" any color to gray hair.

(e) That by the use of said preparation any shade desired can be imparted to gray hair.

It is also stipulated and agreed that if the said Fred Capassela 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. 5, 1934.)

0730. Publisher—Cough Syrup.—The publisher of a daily newspaper of wide interstate circulation printed, published, and circulated ad-

vertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cough syrup.

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. (Sept. 10, 1934.)

0731. **Publisher—Adhesive Compound.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an adhesive compound.

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. (Sept. 10, 1934.)

0732. **Publisher—Cold Tablets.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of cold 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. (Sept. 10, 1934.)

0733. **Publisher—Liquid Aspirin Mixture.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a liquid aspirin mixture.

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. (Sept. 10, 1934.)

0734. **Publisher—Cold Treatment.**—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 a cold treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (Sept. 10, 1934.)

0735. **Publisher—Fingerprint Course.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the vendor of a course in fingerprinting.

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. (Sept. 10, 1934.)

0736. **Publisher—Electric Trouser Presser.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an Electric Trouser Presser.

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. (Sept. 12, 1934.)

0737. **Publisher—Cold Medicine.**—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 a Cold Medicine.

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. (Sept. 12, 1934.)

0738. **Publisher—Cold Medicine.**—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 a preparation alleged to be a preventative and cure for colds.

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. (Sept. 12, 1934.)

0739. Vendor-Advertiser—Feminine Hygiene Preparation.—Muvietan Products Co., Ltd., Hollywood, Calif., vendor-advertiser, is engaged in selling "Marvelcone", for feminine hygiene and in advertising represented:

MAKES NEW DISCOVERY FOR WOMEN

Gives Hygiene Protection in New Healthful Way

A new discovery has been made in feminine hygiene. It is a new method which avoids disappointment in the hygiene problems of married women. Furthermore, it is actually healthful and invigorating.

This scientific formula is called Marvelcone (antiseptic lather). It is greaseless, non-irritating, refreshing, and mild. Yet it is a powerful antiseptic and germicide. It requires no sprays, douches, or other equipment. Marvelcone expands and medicates the folds and crevices.

It leaves an antiseptic lather which gives protection from germs for many hours.

30 days' supply comes in a handy and sanitary aluminum compact. It can be carried in the purse. There is no tell-tale odor, no embarrassment. Marvelcone (antiseptic lather) banishes the uncertainties of old methods of feminine hygiene. It also helps to renew the strength and vitality of tired, nervous women. Enlightened married women say that Marvelcone is the hygiene aid they have been wishing for.

Relieves that tired feeling—Women refresh themselves this healthful new way.

This new discovery, entirely different from all other methods, is called Marvelcone (antiseptic lather)—greaseless nonirritating, refreshing, and mild. Yet it is a powerful antiseptic and germicide. It leaves an antiseptic lather which cleanses and medicates. Marvelcone (antiseptic lather) soothes frayed nerves. It relieves that tired feeling. It refreshes and invigorates a body worn out with shopping, tennis, golf, housework, or any strenuous exercise.

* * * Marvelcone's helpful effect should be quickly noticed, particularly when that trying period comes when less painful inconvenience should be felt. Afraid to marry!

So many of her married friends were unhappy and disappointed, so many had injured their health by the use of poisonous and unreliable methods of feminine hygiene, that she feared to risk marriage. Then one of her happily married friends told her of an amazing new discovery which had been tested in the laboratory of a prominent hospital in Hollywood, which not only insures against disappointment in the hygiene problems of married women but is actually healthful and invigorating.

Marvelcone can be used at any time and depended upon for germ protection for hours afterwards. Enables worried wives to banish hygiene fears and

helps to renew strength and vitality of tired, nervous women. Marvelcone is the germicide that the enlightened married woman has been wishing for. You, too, should use it. You too, should enjoy peace of mind with this safe, reliable method of marriage hygiene.

It is only natural that the always awkward and often ineffective douche method should be replaced by something more convenient—that doubtful powders and clumsy applicators should give way to some modern method—more dependable and more conducive to continued good health.

Marvelcone is the new method in feminine hygiene. It is new in America—a modern improvement on the most-favored method used by informed European women in feminine hygiene. Instantly, women have approved the new simplicity of Marvelcone. Its marvelous compactness removes all possibility of embarrassing situations.

Marvelcone is the new discovery for a thorough and refreshing internal cleansing—leaving a disinfectant, a gently astringent film or coating of great help in most feminine disorders.

(A few minutes use of Marvelcone spreads a healthful and antiseptic film on the walls of the entire vaginal tract. This coating removes unpleasant odor during the menstruating period and relieves the menstrual pains common with many women.

It is made of pure olive oil, quinine, thymol, and other ingredients which give Marvelcone its germicidal and antiseptic properties.

* * * Marvelcone's helpful effect should be noted at the next menstrual period, when little or no painful inconvenience should be felt.

Marvelcone is free from caustic action and has no capacity to injure the mucous membrane. Marvelcone's mildness is indicated by its use as a soap for the toilette of babies in one of the maternity hospitals.

Yet in spite of its mildness and its beneficial effect on the tissues, Marvelcone is not mild with germ life—on the contrary it destroys and prevents the growth of many germs which cause ill health and the discomfort, usually suffered during the monthly period.

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 Marvelcone is a contraceptive or an abortifacient;

(b) That said product is either antiseptic, germicidal or disinfectant;

(c) That it constitutes an adequate treatment for either leucorrhœa, bad health or relief from menstrual pains;

(d) That it leaves an antiseptic lather which gives protection from germs for many hours, or at all;

(e) That it "banishes" the uncertainties of old methods of feminine hygiene;

(f) That this is a new discovery or that it is entirely different from all other methods;

- (g) That it is intended for women "afraid to marry;"
- (h) That it "insures against disappointment in the hygiene problems of married women!"
- (i) That it "can be used at any time and depended upon for germ protection for hours afterwards;"
- (j) That it "enables worried wives to banish hygiene fears;"
- (k) That it is a "reliable" method of marriage hygiene;
- (l) That this is "more dependable and more conducive to good health" than other contraceptives;
- (m) That it "destroys and prevents the growth of many germs which cause ill health and the discomfort usually suffered during the monthly period;"

It is also stipulated and agreed that if the said Muvietan Products Co., Ltd., 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. Sept. 12, 1934.)

0740. Vendor-Advertiser — Printed Texts and Horoscopes. — M y s t i c Brotherhood University, Tampa, Fla., vendor-advertiser, is engaged in selling Printed Texts and Horoscopes and in advertising represented:

There is a mystic key to life by which you can dictate your destiny, control fate, conquer adversity.

In this western world are to be found high initiates working under the great lodge of the world and contacting them are intelligent, sincere, earnest men and women of every walk of life and in every part of the Western Hemisphere. They are finding the personal help, the loving, kindly teachings they need.

First, of course, must come the thorough training and development under competent masters in all departments of occultism, mysticism, psychology, and kindred subjects.

But this need incur no great expense, no giving up of present work while learning. In the privacy of one's own home, in spare hours, the great truths may be studied, the personal instruction received in weekly lessons and letters simple, easily understood, yet giving you the equivalent of a university training, regardless of your previous education and studies.

The cry of humanity today is for light and knowledge, and through the world masters comes the answer—western occultism—no pondering over involved language, no obscure foreign words. Instead the master's teaching through the western traditions give you the secret wisdom of the ages in a form adaptable to modern life and conditions.

Beloved seeker:

You are one of a group of men and women who have been selected to receive special help and instruction from the masters of the world hierarchy.

You are not obligated to pay in money or otherwise for their service to you, though you should be willing to cover the postage and stationery, typing, etc.—such offerings are voluntary and are only to cover your actual expenses—you

cannot pay the masters for their time and services to you. The masters can only give this personal attention to a limited number of selected people, by reason of the great amount of time and expense involved in the individual letters and the psychic work done for you and with you. Less than one hundred can be accepted at this time.

You have doubtless longed for a real opportunity to have help and instruction of such a nature. You have perhaps sought and tried organization after organization, but yet you have never gotten fully that which you sought. Now, without obligation, without any fixed price, without commercialism, there comes the opportunity you seek.

Its masters are working on the modern advanced ray of the western traditions and it is to this eternal temple in the heavens and the greater masters who rule therein that they look for their inspiration and their authority to initiate regardless of their purely legal rights and charters.

The western traditions, therefore, do not refer to America, but trace an unbroken chain back to the highest development of Atlantis. Egypt and its symbols, as well as the European adepts and mystics and their orders and the symbols of mystical christianity are all part of the western traditions and are very different in most cases from the symbol systems of the eastern traditions.

The Interior Order

So in this brotherhood, truth reposes inviolable. It flows steadily from the great interior order, the brothers who live in silence, but yet in real activity. Besides their secret holy work, they from time to time decide upon strategic action. Thus when the earth was nigh corrupt by reason of the great sorcery, the brethren sent a messenger to bring freedom to mankind.

Now, in these days, have they raised up certain trusted ones to deliver unto men and women the keys to spiritual knowledge and in fulfillment thereof, there has come to you, the reader of this invitation, the message from the interior order.

Rebuilding the Self

This part of the work, consisting of 41 lessons, takes up those phases of mental and mystical development, which brings about a magnetic personality, success on the mundane plane, through a utilization of certain little-known forces, and brings about peace, happiness, and prosperity through direct aid in the untangling of personal affairs and the reconstruction of the personal viewpoint and understanding. There is brought about during this phase attunement with the great interior order and its power and knowledge as occult cognition is unfolded.

Instruction in the Deeper Mysteries

This phase of the work covers a broad course of instruction, uncontaminated by extreme ideas or faddists' viewpoints. It is not confined to the ideas of any one leader, but rather opens to the student the entire knowledge of the ancient mystery schools, concerning the inner plane organization, the fundamental facts concerning the universe and the mighty cosmos. * * *

The Powers of the Magus

This embraces the third part of the work, and completes the most comprehensive system of personal instruction which has ever been given to the western world regardless of the claims of various organizations * * * and covers

in other words, the most absolute and divine knowledge of natural philosophy, leading to the powers of the adept, controlling manifestations of nature, and invokes the cooperation of the very highest intelligences, who are happy and willing to serve him who achieves. The various phases of this part of the brotherhood work includes the most carefully guarded individual instructions which are combined with the personal correspondence and guidance, not hitherto available.

* * * it may be said that your teachings will come, in the early grades, by mail, and in the higher part of the work, they will come to you psychically, directly from one of the several masters.

* * * the personal help and instruction of the master is what makes the difference and what will make your success assured, even if you have failed under commercial methods of self-learning. Personal, individual help is needed to demonstrate occult laws and principles.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making the foregoing and many other representations of like import set forth in the stipulation 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 "high initiates" working under the "great lodge of the world" will personally teach one how to dictate his destiny, control his fate, or conquer adversity;

(b) That a "master" will be "assigned" to show you the path of power; or that a master will "personally aid" you in the development of the inner faculties, or at all; or will bring to your aid "mighty forces of the unseen worlds", or any other forces;

(c) That this corporation has on its staff, and at its beck and call, "competent masters in all departments of occultism, mysticism, psychology, and kindred subjects";

(d) That respondent's teachings are "authorized"; or

That they were prepared "by order of the secret council of the west" or by any other authority; or

That they form "the closely guarded secret of certain orders of magi and mystics" or of any other body; or

That by putting them into practice the student will find plenty even in depression, or be able "just at a glance" to have men and women cooperate with him and help him to the things he wants;

(e) That the purchaser must "act quickly" to get the benefit of respondent's "special offer" of astrological horoscopes; or that such horoscopes are "accurate";

(f) That the prospect is "one of a group of men and women who have been selected to receive special help and instruction from the masters of the world hierarchy" or from any other body; or

That he is "not obligated to pay in money or otherwise for their service"; or

That the number "selected" is limited; or

That respondent's offer is "without commercialism"; or

That this "world organization" has the attributes of "the christ of the rays";

(g) That respondent's "pronunciamentoes" bring "direct messages of the white brothers" or of any other mystical group or body;

(h) That respondent's "masters" are "working on the modern advanced ray of the western traditions"; or

That they look to the "greater masters who rule in the eternal temple in the heavens" or to any other transcendental personages for their "authority to initiate" the prospect;

(i) That the invitation is a "message from a great university" to the person addressed; or

That through respondent corporation the sages of the illuminated government have "revealed to the outer world a pathway, in order to attract men to the great truths of their sanctuary"; or

That respondent's courses of study are "reflections of the supreme illumination"; or

That through contact with respondent corporation "truth inviolable flows steadily from the great interior order, the brothers who live in silence"; or

That "certain trusted ones"—the "brothers of the university"—have been "raised up to deliver unto men and women the keys to spiritual knowledge"; or

That the interior order has designated the prospective purchaser as an "accepted neophyte student"; or

That "the brotherhood is a noncommercial university" or a "replica of the mystery schools of old"; or

That it "brings to its members the close contact with the highest masters of the lodge invisible" or with any other "masters" or "lodges" whatsoever;

(j) That "this occult university, like the mysteries of old, asks nothing for itself"; or

That "its illuminated teachers, as masters of initiation work in obscurity, behind the veil, contact with their assigned student neophytes by mail and otherwise, working with them and for them in many strange ways"; or

That the purchasers of respondent's service "will find that the master is a guide and friend in the planes that lie beyond and his contact is established with the interior order, the lodge invisible";

(k) That through the "personal" work of the master assigned to him, the student will attain such knowledge and contacts without effort, hard study, practice, or changes in habit; that "ten or fifteen minutes nightly at your own conveniences, is all that is required";

(l) That respondent's course of instruction brings to the student either "a magnetic personality", or

"Success on the mundane plane, through a utilization of certain little known forces" or otherwise, or

"Peace, happiness, and prosperity through direct aid" or otherwise, or

"Attunement with the great interior order and its power and knowledge", either through the unfoldment of "occult cognition" or otherwise; or

That it "opens to the student the entire knowledge of the ancient mystery schools";

(m) That respondent's said correspondence course is "the most comprehensive system of personal instruction which has ever been given to the western world regardless of the claims of various organizations"; or

Leads the student "to the powers of the adept, controlling manifestations of nature", or

"Invokes the cooperation of the very highest intelligences, who are happy and willing to serve him";

(n) That for subscribers to respondent's course, "psychic help in all emergencies is given" or any other help beyond letters of advice from respondent's corps of instructors;

(o) That "later on the psychic revelations of the lodge invisible and its great halls of initiation come to you";

(p) That "in the higher part of the work, the teachings will come to you psychically, direct from one of the several masters";

(q) That your success is "assured" through the "personal help and instruction of the master even if you have failed under commercial methods of self learning";

(r) That respondent corporation's methods are those of the "western traditions using the same contracts of the Mayan and Atlantean groups, and the high spiritual contracts of the Master Jesus and the group working with Him in the inner planes"; or

That respondent is collaborating with "High Initiates working under authority to the great white lodge of the world and under guidance of the lodge invisible", or with any other beings, persons, hierarchies, groups or authorities whatsoever;

(s) That respondent is maintained by "free will offerings" so long as the subscriber must enclose his "offering" with his applica-

tion and agree to "send you my alms each lunar month", before receiving the instructions, "contacts" and "aid" promised; and from making any other claims or assertions of like import.

Respondent further stipulates and agrees to discontinue the use of the word "university" as a part of its corporate or trade name or in any other connection, until such time as it may conduct a general institution of higher learning recognized by the collegiate world as entitled to the designation "university."

Respondent furthermore stipulates and agrees to cease and desist from issuing certificates or diplomas purporting to confer the degree of "doctor of philosophy" or any other degree indicating a college education.

It is also stipulated and agreed that if the said corporation, now designated "Mystic Brotherhood University", its officers, or agents, under whatsoever title it may hereafter operate, 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. 12, 1934.)

0741. Vendor-Advertiser—Epilepsy Treatment.—Dr. S. Perkey Co., Altadena, Calif., vendor-advertiser, is engaged in selling an alleged treatment for epilepsy and in advertising represented:

FITS

Epilepsy cases of 30 years' standing have been permanently relieved by Dr. Perkey's Prescription. Write for special trial offer and money-back guarantee. The Dr. S. Perkey Co., Dept. 9, 234 E. Las Flores Drive, Altadena, California.

RELIEF FOR EPILEPSY

Sufferers from this dreadful malady find quick, positive relief with Dr. Perkey's Prescription. Used ever since 1877 by thousands all over the world, and hundreds of grateful letters prove the merit of this remarkable remedy.

Dr. Perkey's Prescription for Epilepsy

A Message of Hope for All Sufferers from this Dreadful Disease

A severe case of epilepsy in one of his own patients called Dr. Perkey's attention to the crying need of a specific for this dreadful affliction, and, having a thorough knowledge of chemistry as well as medicine, he set about to find a remedy. He sought to find not only a curative but a palliative treatment, one that would enable those afflicted to go about their daily concerns with comfort—free from attacks with their consequent mental deterioration. Finally his efforts were crowned with success, and the formula now known as Dr. Perkey's Prescription for Epilepsy was given to the world.

* * * and ever since, the remedy has been in constant use by thousands of sufferers from epilepsy and fits.

What Grateful People Say of Dr. Perkey's Epilepsy Prescription

You cured me of my attacks and for about 13 years or so I was without any attacks at all so I thought you can cure me again.

My mother doctored with you some fifty years ago and was cured of the dreaded disease, epilepsy. Consequently, I have much faith in your treatment.

I have a little grandson 3 years old, who has an affliction the ordinary doctors fail to diagnose * * *.

I believe I have been entirely cured, as I have not been afflicted for about 20 years. I have recommended your remedy. I cannot say what it has done for others, but I believe when I had tried out all other treatments and they failed to help me, I sent for a package of Dr. Perkey's * * * I believe it will cure the most severe case if only tried out long enough.

And hundreds of these people testify that the prescription has Permanently relieved them of this dreadful malady.

And it is to every epilepsy sufferer. Because Dr. Perkey's Prescription for Epilepsy will enable sufferers to go about their daily affairs and earn a living without the haunting fear that possibly the next moment they may be stricken down—at the wheel of a car perhaps, or in traffic where a fall would be fatal.

Use them today, and begin the return journey to good health now!

The worry and uncertainty of not knowing when a fit may come on; whether an attack may come while crossing a street through traffic when a fall might prove fatal. That, my friend, is a terrible thing, the horror of uncertainty.

Wouldn't you like to take that horror out of the life of the loved one you had in mind when you wrote to me? Well, you can do it.

You can do it simply by the use of Dr. Perkey's Prescription for Epilepsy. Do you know, there are many patrons of mine who have controlled their fits with this prescription for years? They have banished the horrible nightmare of uncertainty. They go about their daily affairs secure in the knowledge that there will be no unexpected attacks to cause embarrassment—or perhaps serious accident. They can live normal lives and associate with normal people. They can be happy.

You can bring this happiness into the life of your loved one simply by accepting my trial offer.

Dr. Perkey's Prescription has been used by sufferers throughout the world for more than half a century; and thousands claim to have been completely restored.

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 Dr. Perkey's Prescription gives permanent relief in epilepsy cases of 30 years standing or at all;

(b) Inferentially or by direct statement, that said preparation is a specific remedy for epilepsy in any form;

(c) Inferentially or by direct statement that said preparation is a cure for epilepsy or fits or falling sickness;

(d) That the use of this medicine banishes the haunting fear that possibly the next moment one may be stricken down, and also the horror of uncertainty of not knowing when a fit may come on;

(e) That the "return journey to good health" begins immediately with the first dose taken, of this medicine;

(f) That thousands claim to have been "completely restored" by the use of said prescription;

(g) That said medicine is a competent treatment for the various forms and causes of epilepsy, or that its therapeutic powers can do more than lessen the severity of acute attacks and diminish the frequency of attacks of some types of epilepsy;

It is also stipulated and agreed that if the said Susie Ford Perkey and Mary Alice Perkey 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. (Sept. 14, 1934.)

0742. Vendor-Advertiser—Premium Display Sales Cards.—Gay Games, Inc., Muncie, Ind., vendor-advertiser, is engaged in selling premium display sales cards and in advertising represented:

"SALEMEN WHO CALL ON BILLIARD PARLORS, CIGAR, DRUG, AND CONFECTIONERY STORES

YOU CAN ADD \$50 A WEEK

to your income at no additional expense by handling our line of sales card—including cigarette, candy, trade, and cash prize cards. Steady repeat business. Only one representative in each section. Write us today for your territory. Gay Games, Inc., 424 E. Howard St., Muncie, Ind."

This respondent represents to the Federal Trade Commission that it has definitely discontinued the above advertising found objectionable and has abandoned this method of contacting consumers, and does not intend to resume such advertising in the future. Respondent 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 it will not make unmodified representations of claims or earnings of salespersons in excess of the average earnings of its active full-time salesperson achieved under normal condition in the due course of its business.

It is also stipulated and agreed that if the said Gay Games, 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. 14, 1934.)

0743. **Publisher—Radio Sales Plan.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a radio sales 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. (Sept. 14, 1934.)

0744. **Publisher—Windshield Shade.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a windshield shade.

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. (Sept. 14, 1934.)

0745. **Publisher—Account Books.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of account books.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements, disclaims any interest in the business of the advertiser or the publications of such advertisements that he cares to defend before the Commission, and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist

order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (Sept. 14, 1934.)

0746. Vendor-Advertiser—Obesity Treatment.—Battle Creek Drugs, Inc., Battle Creek, Mich., vendor-advertiser, is engaged in selling "BonKora", an alleged treatment for obesity, and in advertising represented:

EAT BIG MEALS, FAT GOES QUICK

HOW MANY POUNDS WOULD YOU LIKE TO LOSE?

DON'T STARVE—EAT BIG MEALS

HOW YOU PUFF AND BLOW! GET RID OF THAT FAT WITH BONKORA

* * * The manufacturers of BonKora KNOW what it will do for you so they make this GUARANTEE: * * *.

Reduce fat all over if you wish. Or, if you are just fat around waist, bust, or hips, this fat goes first * * *.

LOSES 2½ LBS. OF FAT IN 4 WEEKS. REDUCES HIPS 8 INCHES

NEW BATTLE CREEK REDUCING TREATMENT

Eat Big Meals. See Fat Go Quick—Or Pay Nothing

BonKora, the new Battle Creek Reducing Treatment, has even taken off fat from people who had tried other methods in vain.

Reduces now "3-stage" way. Triple action; triple speed. Just take a little BonKora daily, to help body function properly; to remove heavy wastes and moisture from fatty tissues. Eat big meals of foods you like as explained in BonKora package * * *.

You don't want to be fat any longer. And you don't want to have your beauty marred by heavy chin, bust, waist, hips, or limbs. Get a bottle of BonKora * * *.

BonKora—America's Biggest Selling Reducing Preparation

If You Wish Further Information or Advise Write Us

We have tried to make this circular as clear as possible. However, if there is any further information you desire, please don't hesitate to write us. We will be glad to answer * * *.

BonKora is * * * sold for reducing weight * * *.

* * * takes off fat the new "3-stage" way.

Triple action; triple speed. * * *.

* * * This treatment builds health while reducing fat. Don't let ugly fat ruin your charm. Get BonKora from druggist to-day. * * *.

* * * This treatment builds health while reducing fat the quickest way. * * *.

People write it took off fat even when other methods had failed. * * *.

* * * They reduced faster or slower as they pleased and lost as much or as little as they wished. * * *.

* * * Take a little BonKora daily and eat big meals of tasty foods you like in combinations as explained in BonKora package.

So don't be fat any longer. Get BonKora from druggist. * * *.

What BonKora has done for these people, it should do for you * * *.

Get rid of your fat. Get a bottle of BonKora the new Battle Creek reducing treatment * * *.

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) Directly or indirectly that medical advice will be furnished by respondent to users or prospective users of BonKora;

(b) That users of said preparation may "eat big meals" or "tasty foods you like", unless such representations are so qualified as to limit the foods to the menus appearing in the folder enclosed in the BonKora package.

(c) Generally, that said preparation has been effective as a weight reducer in cases where other methods have failed;

(d) That BonKora is America's biggest selling reducing preparation;

(e) That by the use of said preparation any specified parts of the body can be reduced without other parts of the body being likewise affected;

(f) That said preparation is an effective treatment for obesity unless such representation is qualified by a conspicuous statement made in direct connection therewith to the effect that the preparation is recommended only for cases of obesity due to over eating, drinking, faulty elimination, indiscretion in diet, or toxic condition;

(g) That said preparation has triple action or triple speed;

(h) That the use of said preparation is the quickest way to reduce fat;

(i) That users of said preparation can reduce as fast as desired or lose as much weight as desired;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparation in interstate commerce that it will not:

1. Represent that purchasers may expect to reduce weight or measurements in any specific amount or so reduce within any definite period of time. Provided, however, that this inhibition is not intended to prevent the use of truthful testimonials, properly verified, before publication, with headings sustained by the statements made in such testimonials;

2. Represent by direct statement that purchasers may expect the same results as shown by those giving testimonials;

3. Publish testimonials until statements therein have been properly verified;

4. Represent in advertisements by such statements as "How many pounds would you like to lose?" that a prospective user of BonKora can reduce as many pounds as desired;

5. Publish in advertisements offers of refund so worded as to imply that the results represented are guaranteed by the respondent.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparation in interstate commerce:

That in all advertising literature prospective purchasers will be informed that in connection with the taking of BonKora it is advisable and desirable to follow diets similar to those contained in menus prepared and furnished by the respondent and included in a pamphlet or folder enclosed with the package.

It is also stipulated and agreed that if the said Battle Creek Drugs, 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. 19, 1934.)

0747. Vendor-Advertiser—Sea Plant Preparation.—Sea-Tone Corporation, 542 S. Broadway, Los Angeles, Calif., vendor-advertiser, is engaged in selling Sea Plant preparation and in advertising represented:

Sea-Tone * * * is also a food supplement. * * * it relieves cases of deficiency disorders * * * by removing their cause. * * *

A list of diseases (including such common ailments as goitre, underweight, anemia, fatigue, nervousness, * * * rheumatism, premature old age, sciatica, common colds, kidney, bladder, and stomach trouble, indigestion, dyspepsia, * * * rickets, acne skin troubles, faulty appetite, backache, malnutrition, neuritis, poor complexion, catarrh, gout, high blood pressure, acidity, obesity, etc.) are known by the general name, deficiency disorders. * * *

If you are afflicted with any of these deficiency disorders, what you need is a medicinal food supplement that will supply your body with the necessary minerals such as iron, calcium, iodine, phosphorus, manganese, sulphur, potassium, sodium magnesium, etc. * * *

Goitre, anemia, general run-down condition, nervousness, fatigue, over or under weight, * * * rheumatism, sciatica, common colds, kidney trouble, bladder trouble, stomach trouble, indigestion, dyspepsia, * * * rickets, skin disorders, faulty appetite, backache, bronchitis, malnutrition, neuritis, poor complexion, catarrh, gout, lumbago, arterio sclerosis, asthma, acidity, * * * are due to an improper balance of the vitally essential mineral elements * * *

Sea-Tone helps make rich, red blood, stimulates and regulates the glandular secretions, revitalizes tired, worn-out nerves, and tends to bring a glorious state of renewed strength, health, and vitality.

* * * Each plant is selected because it is especially rich in one or more of the sixteen minerals the human body must have to maintain health, Sea-

Tone thus contains all sixteen of these minerals * * * It also contains a large amount of vitamins * * *.

* * * we feel more and more strongly a desire to give everyone in the United States who is in poor health a chance to use Sea-Tone.

Do not continue to starve your blood, your glands, your body, for the vital mineral salts such as potassium, sodium, sulphur, magnesium, iron, calcium * * *.

Rich in the following—

| | |
|------------|-----------|
| * * * | Manganese |
| Iron | Magnesium |
| Calcium | Potassium |
| Phosphorus | Sodium |
| Sulphur | |

FOR USE IN THE FOLLOWING DISORDERS

| | |
|---------------------------------|-------------------------------------------|
| * * * | Secondary anemia : |
| Underweight | Caused by malnutrition, |
| Fatigue | * * * |
| Nervousness | * * * |
| Common colds due to acidity | Forms of stomach trouble |
| Indigestion | Poor complexion, dry skin, lack of color, |
| Malnutrition | Gout, due to improper diet and faulty |
| high blood pressure : | metabolism. |
| Due to improper diet, toxine in | * * * |
| blood stream | |

* * * The tablets contain organic minerals which MUST be present in the human body, and are rich in necessary vitamins * * *.

When Sea-Tone tablets are taken into the system, the human body is immediately furnished with a supply of essential minerals in organic form, in larger quantity * * *.

Sea-Tone furnishes the system with minerals and vitamins which aid in the process of metabolism * * *.

Sea-Tone tablets combine kelp with other sea plants brought from the four corners of the world which science has proved combine to supply all the essential organic mineral salts and important vitamins, properly proportioned by nature to make a vitalizing, energizing food for brain, muscles, nerves, flesh, bones, and glands.

Thousands sick and ailing from deficiency disorders and general run-down condition, should give Sea-Tone a trial. This remarkable treatment supplies necessary vitamins and organic iron, iodine, calcium, potassium, sulphur, and builds strong, robust, vigorous bodies; Not a drug but a supplementary food * * *.

Thousands sick and suffering from deficiency ailments such as * * * secondary anemia, nervousness, stomach trouble, ulcers, rheumatism, kidney and bladder disorders, * * *

* * * Premature aging, skin disorders, dyspepsia, high blood pressure, gall stones, neuritis, catarrh, hardening of the arteries, etc. have found amazing relief * * *.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or

causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise—

(a) That said preparation is a competent treatment for deficiency disorders, or that it removes the cause of deficiency disorders.

(b) That said preparation is rich in iron, calcium, phosphorus, manganese, sulphur, potassium, magnesium, and sodium.

(c) That said preparation supplies the necessary vitamins.

(d) That said preparation is a food or a food supplement.

(e) That said preparation supplies to the human body the necessary minerals in organic form.

(f) That said preparation aids in the process of metabolism.

(g) That said preparation is not a drug.

(h) That said preparation is a competent treatment for the following ailments:

| | |
|-------------------------------|----------------------------|
| Goitre (except simple goitre) | Backache |
| Underweight | Malnutrition |
| Anemia | Neuritis |
| Fatigue | Poor complexion |
| Nervousness | Catarrh |
| Rheumatism | Gout |
| Premature old age | High Blood Pressure |
| Sciatica | Acidity |
| Common colds | Obesity |
| Kidney trouble | General run down condition |
| Bladder trouble | Bronchitis |
| Stomach trouble | Lumbago |
| Indigestion | Arterio sclerosis |
| Dyspepsia | Asthma |
| Rickets | Ulcers |
| Acne skin troubles | Hardening of the arteries |
| Faulty appetite | |

(i) That said preparation makes rich blood; stimulates or regulates the glandular secretions; revitalizes nerves or renews strength, health or vitality.

It is also stipulated and agreed that if the said Sea-Tone 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. (Sept. 19, 1934.)

0748. Vendor-Advertiser—Hair Colorer.—Heils Laboratories, Hollywood, Calif., vendor-advertiser, is engaged in selling hair colorer and in advertising represented:

Gray hair.—New, marvelous treatment (not a dye). Restores gray, streaked or faded hair to natural color. Kills dandruff. Stops falling hair, itching scalp. Helps to clear up eczema. Stimulates hair growth and prevents bald-

ness. Send 25¢ for liberal trial; then convince yourself. Literature free. Address Heils Laboratories, Dept. 7, Hollywood, Calif.

Whether your hair was black, brown, auburn, or blonde, Heils Hair Tonic will restore the hair to its original color.

Why be handicapped in your business and social life by having gray hair or dandruff? Start today to remove these obstacles to success and happiness. Regardless of the color of your hair, the one tonic does the work.

Heils Hair Tonic is giving good results by natural process, not only in the restoration of the natural color, but in the removal of dandruff, itching scalp, falling hair and other scalp disorders.

Heils Hair Tonic requires no special application, just apply a sufficient amount so that the scalp feels damp all over. The pores of the scalp will absorb only a small amount and the excess is wasted. As soon as the hair reaches its natural color, stop the everyday use of tonic and apply it once a week to keep the scalp in a healthy condition.

Time required to restore the natural color of the hair depends upon condition of the scalp and the general health. Some people have had the color restored in a remarkably short time—while in some cases others take longer, due to an abnormal physical condition, accountable to acidity of the system.

First of all, let me say that Heils Hair Tonic is an effective treatment to restore gray hair to its natural color, whatever shade it may have been. There is nothing more effective to kill dandruff, stop itching scalp, and it is splendid for clearing up eczema as well.

Remember, it is not a dye. Heils Hair Tonic has been used for 15 years with most satisfactory results.

Here is an example of an everyday occurrence. Only recently one of my acquaintances, a man of 67 years of age, found it difficult to hold his position because of his hair, which was turning gray. I urged him to try Heils Hair Tonic and after using two bottles his hair was practically restored to its natural color.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated, any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise—

(a) That said preparation restores gray, streaked, or faded hair to its natural color; or

(b) That it is new; or

(c) That it either kills or removes dandruff by mere dampening of the scalp; or

(d) That it will prevent baldness or stimulate growth of hair by mere absorption through the pores of the scalp; or

(e) That it is a competent treatment or an effective remedy for eczema; or

(f) That it is not a dye; or

(g) That it will restore hair to its original color;

and from making any other claims or assertions of like import.

Respondents further stipulate and agree to discontinue the use of the word "Laboratories" as a part of their trade name until such time as they shall have equipment entitled to be designated as a laboratory.

It is also stipulated and agreed that if the said Frank J. Heilman and/or Mrs Frank J. Heilman 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. (Sept. 19, 1934.)

0749. **Publisher—Stomach Remedy.**—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 a stomach remedy.

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. (Sept. 21, 1934.)

0750. **Publisher—Laxative Cold Remedy.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a laxative cold remedy.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the 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. (Sept. 21, 1934.)

0751. **Publisher—Cold Preparation.**—The publisher of a daily newspaper of wide interstate circulation printed, published, and circu-

lated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cold preparation.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaiming 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. (Sept. 21, 1934.)

0752. **Publisher—Cold Preparation.**—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 a cold 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. (Sept. 21, 1934.)

0753. **Publisher—Laxative Cold Preparation.**—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 a laxative cold 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 stipu-

lation or other agreement between the advertiser and the Commission of which he has notice. (Sept. 21, 1934.)

0754. **Publisher—Cough Syrup.**—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 a cough syrup.

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. (Oct. 3, 1934.)

0755. **Publisher—Cough Syrup.**—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 a cough syrup.

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. (Oct. 3, 1934.)

0756. **Publisher—Retail Dealer Advertising Plan.**—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 retail dealer advertising 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 Commis-

sion, 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. (Oct. 3, 1934.)

0757. **Publisher—Cold Tablets.**—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 a cold tablet.

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. (Oct. 3, 1934.)

0758. **Publisher—Cold Preparation.**—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 a cold 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. (Oct. 3, 1934.)

0759. **Publisher—Cold Preparation.**—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 a cold 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. (Oct. 3, 1934.)

0760. **Publisher—Cold Preparation.**—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 a cold 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. (Oct. 3, 1934.)

0761. **Publisher—Cold Preparation.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cold 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. (Oct. 3, 1934.)

0762. **Publisher—Cold Preparation.**—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 a cold 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. (Oct. 3, 1934.)

0763. **Publisher—Cold Preparation.**—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 a cold 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 of 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. (Oct. 3, 1934.)

0764. **Publisher—Cold Remedy.**—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 a cold remedy.

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. (Oct. 3, 1934.)

0765. **Publisher—Cold Remedy.**—The publisher of a daily newspaper of wide interstate circulation printed, published, and circulated ad-

vertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a cold remedy.

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. (Oct. 3, 1934.)

0766. **Publisher—Herbal Tonic.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a herbal tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which he has notice. (Oct. 3, 1934.)

0767. **Publisher—Pain Relief 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 a pain relief 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 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. (Oct. 3, 1934.)

0768. **Publisher—Cheese Chips.**—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 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. (Oct. 3, 1934.)

0769. **Vendor-Advertiser—Food Preparation.**—The Wander Co., Chicago, Ill., vendor-advertiser, is engaged in selling "Ovaltine", a food preparation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making certain 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 Ovaltine will induce sleep in all cases, or induce sleep for any definite period of time or do more than induce sleep promptly in many cases;

(b) That Ovaltine will increase weight in all cases, or to any definite extent or within any definite period of time;

(c) That Ovaltine will decrease nervousness in all cases, or to any definite extent or within any definite period of time;

(d) That Ovaltine is a specific against digestive disturbances;

(e) That Ovaltine will aid digestion to any specified or definite extent;

(f) That Ovaltine will rebuild wasted tissues, or do more than assist nature to rebuild them;

(g) That Ovaltine will increase the appetite to any definite extent;

(h) That Ovaltine is "utterly" different from other food drinks;

(i) That Ovaltine is a direct nerve or brain food, or that it will have any direct action upon the nerve or brain cells;

(j) That Ovaltine will induce a specific hunger for vegetables;

(k) Anything with reference to the digestive power of Ovaltine that is not justified by reliable physiological evidence.

It is also stipulated and agreed that if the Wander Co. should ever assume or indulge in any practice violative of the provisions of this agreement, this stipulation may be used in evidence against it in the trial of the complaint which the Commission may issue. (Oct. 3, 1934.)

0770. **Vendor-Advertiser—Toilet Preparations.**—The Health - O - Quality Products Co., Cincinnati, Ohio, vendor-advertiser, is engaged in selling Toilet Preparations, and in advertising represented in the following publications: The November 1933 issues of Comfort Magazine, Home Friend Magazine, and Science and Mechanics, the December 1933 issues of Good Stories, Gentlewoman, and Illustrated Mechanics, and otherwise:

What will you do with \$3,500.00 cash

If I give it to you? I will pay \$250.00 just for the winning answer.

I am going to give \$3,500.00 to some ambitious deserving man or woman who answers my announcements. You may be the one to get it. But, before I give this money to anyone, I would like to know how wisely the \$3,500.00 will be used. Why do you want \$3,500.00 cash? Just answer the question—tell me in 20 words or less why you want this fortune—nothing else to do toward this \$250.00 cash prize! It is so simple! The first answer that comes to your mind may win. Nothing fancy is needed—It's what you say that counts. Just give me your reasons in your own words why you want the \$3,500.00

20 Simple Words Win \$250.00

Nothing More for You to Do! Costs nothing to win. Nothing to buy or sell. \$250.00 prize given just for an answer to my question.

There is no way you can lose anything. Simply tell me why you want \$3,500.00. The prize for the winning answer is \$250.00. Just sending an answer qualifies you for an opportunity to win \$3,500.00 in a final prize distribution. What an amazing opportunity—why, most people work and save a lifetime and never get as much money as you may win.

THINK NOW, HOW WOULD YOU SPEND \$3,500.00?

Would you start a business; would you invest it; pay off a mortgage; buy a new home; or travel? Maybe you would spend it for education. Just think what \$3,500.00 could mean to you! Think of what you could do with so much money. Plan now—then write your answer and rush it to me at once. Yours may easily win.

I'M GIVING \$3,500.00 TO SOME DESERVING PERSON

Just sending answer qualifies you for opportunity to win \$3,500.00.

Some say I am wrong. They say that giving money to people will not help to bring back prosperity. They say that the people who get money from me will spend it foolishly. I want to find out for myself. I am going to give away over \$6,000.00. Someone is going to get \$3,500.00 in cash. If I gave you

the \$3,500.00 what would YOU do with it? Tell me in 20 words or less. Just sending an answer qualifies you for the opportunity to win \$3,500.00. Here is an opportunity of a lifetime. Costs you nothing to win. Send no money—just tell me why you want the \$3,500.00 that I have promised to give to some ambitious, deserving person.

SIMPLE EASY RULES

Only one answer accepted from a family. Use your own name. You must be over 16 years of age and reside in the Continental U. S. \$250.00 given for best answer to "Why do you want \$3,500.00"? Answers must be postmarked not later than February 28, 1934. Judges will consider only for practical value of the idea. Construction, spelling, neatness, or ingenuity in submitting answer not considered. Duplicate prizes in case of ties.

The Federal Trade Commission, from an investigation made, had reason to believe that the merchandising plan in use by this advertiser was misleading and deceptive, to the injury of the public and of legitimate competitors, and had the capacity and tendency to and did cause erroneous impressions in the minds of prospective purchasers, the progressive steps of this contest being summarized as follow:

The contact advertisements stated that \$3,500 was to be "given" away "to some deserving person" who would make the best use of it, and a preliminary prize of \$250 was offered for the best 200-word essay on the subject, all persons who respond being eligible to win the \$3,500 grand prize itself—no canvassing involved, no house-to-house sales, no puzzles to solve, etc.

The essay when received was praised as a possible winner of the \$250 prize plus \$100 for "promptness"; and then the prospect was informed that he had been "officially" awarded 12,500 "points" toward the big prize (out of a total of 15,000 points to win); the prospect was declared "now eligible to become first grand prize winner"; was presented with an elaborate "first grand prize certificate"; and was told that for \$1 he might purchase goods of respondent whose "retail price" was \$5.15 and receive also 2,495 more "primary points" toward the 15,000, making a total of 14,995 points, upon the investment of \$1. The rules of the contest were printed in small type on the reverse side of the certificate.

The prospect upon sending in his \$1 received a "winner's final certificate" and credit for 14,995 points, and was then informed that upon the purchase of another assortment of goods for \$3 he would receive 4 more "primary points", making his total 14,999, with only 1 point between him and the \$3,500.

Investing \$3 more, he received a "final primary points certificate" and credit for 14,999 points. The fact was called to his attention that the winning of this final 1 point depended upon having the most "gold certificates" ("prize-winning votes" in later series);

that these gold certificates were awarded 1,000 with each dollar's additional purchase by the prospect; and a special bonus of 10,000 gold certificates was given him "free" to help him along. Besides, the prospect was told that if he would then buy \$5 more of goods he would receive an extra bonus of 100,000 gold certificates.

Sending in his \$5 more, he received the 100,000 bonus gold certificates "free" and was informed that thereafter he would be allotted 2,000 gold certificates instead of 1,000 for each \$1 purchase; and was thereupon advised to get busy and acquire them. All along, the prospect was repeatedly assured that no other contestant had any more "points" than he.

Later on (2 weeks), the contestant received word that he would then get "triple gold certificates", or 3,000 certificates instead of 1,000 with each \$1 purchase.

Then came a "bargain" wherein he would get 25,000 bonus gold certificates with the purchase of 1 dozen 60¢ assortments of merchandise, and 50,000 with a purchase of 2 dozen assortments, with an extra assortment thrown in "free."

Finally he was offered, with each 50¢ assortment bought, 15,000 bonus gold certificates, and with each 23¢ purchase, 5,000 bonus gold certificates.

The winning of the final 1 "point" involved the procurement of the most "gold certificates", or "prize-winning votes", which frequently ran into millions, by canvassing and selling, over a period of months. Respondent awarded 30 times as many "gold certificates" in the final stakes as in the beginning for each \$1 expenditure by the contestant; thus reducing the relative value of the preceding gold certificates, the double certificates, the triple certificates, and the bonus certificates.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making the foregoing and many other representations of like import set forth in the stipulation 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:

(1) That any prize money, or other thing of value, is "free" or "given" away, under respondent's merchandising scheme, unless the terms and conditions under which such prize or other thing is awarded, shall be clearly set forth in immediate connection with such offer;

(2) That respondent is concerned with how "wisely" this alleged money gift will be used, before presenting it to "some deserving person";

(3) Inferentially, that the wisest answer will win the ultimate grand prize of \$3,500, etc.;

(4) By ambiguity, camouflaging, confusing phraseology, or intermingling of words, that the requirements for winning the preliminary prize of \$250 are the requirements for winning the final grand prize of \$3,500;

(5) That winning the grand prize is easy, or that "it is all so simple";

(6) That, to win the prizes in the merchandise contest, there will be

(a) Nothing to buy or sell,

(b) No house-to-house canvassing,

(c) No impossible tricks;

(7) That the mere "writing and mailing your name and address may bring you a fortune";

(a) This coupon may bring you \$3,500; or that

(b) "Just sending an answer" qualifies for opportunity "to win \$3,500 in final distribution";

(8) That any answer to the contact advertisement is so good it "passes immediately into that group from which the judges will select the winner";

(9) That with the mere mailing of your answer, "you are now eligible to become first grand-prize winner"; or

(a) Are now qualified for the extra promptness prize; or

(b) Are favored with an "advance standing at once"; or get off "on a roaring start"; or

(c) Have made the first successful step toward winning a fortune;

(10) That in the preliminary stages, the contestant has already made such progress that his choice of prize is requested, whether auto and part cash, or all cash;

(11) That "your nearest dealer will deliver the auto, driving it to your front door and the very same day the mailman will bring you a certified check for \$1,000 and another \$1,000 for promptness", unless qualified to show clearly that this applied only to the ultimate winner of the first prize;

(12) That by inference or direct statement a contestant has made as much progress as any other contestant toward winning a prize, unless respondent's records disclose such representation to be an accurate statement;

(13) That "with this order today you have pushed yourself ahead of many";

(14) That "by using this special order blank you can boost your score away ahead of many and get into a winning lead";

- (15) That you may "step into first prize winning with (these) bonus gold certificates to help you";
- (16) That "the 10,000 gold certificates sent will give you a splendid start toward the final point necessary to make you sure of winning \$4,000";
- (17) That you "get 100,000 gold certificates free"—(upon payment of \$5);
- (18) That the bonus of 100,000 certificates "might be just the required margin necessary to make you first grand prize winner";
- (19) That you should not "let a \$3 order keep you from the opportunity to win a fortune";
- (20) That you may "assure yourself of a grand prize winning position" by buying assortments 34 and 35;
- (21) That you will "assure yourself of winning" and "step ahead of others" by acquiring 25,000 bonus gold certificates with a "bargain" purchase; 50,000 with a double assortment, etc.;
- (22) That everyone who takes an active part will be "rewarded by cash";
- (23) That "we hereby agreed to pay you \$4,000 cash", unless conditioned upon winning;
- (24) That "\$4,000 (is) now yours" (if and when you get 1 more "point");
- (25) That "we guarantee" to send 4 more points upon receipt of \$3;
- (26) That "I guarantee you, that you positively win \$3,500 with only 15,000 points;
- (27) That "I am giving you now an advance standing of 12,500 points—more than one-half towards the necessary 15,000 'points'";
- (28) That "here's a \$1,000 start";
- (29) That \$1,000 "extra" will be given "for acting quickly," such sum being already included in the \$3,500 advertised;
- (30) That the prize of \$1,000 for "promptness" is of any advantage so long as the same chance is given to entries subsequent to the alleged closing date;
- (31) That, at any stage of the contest before the final run-off, there is
- (a) Just one thing to do now; or
 - (b) Only 1 thing to do to win the prize, or
 - (c) Only one thing to do now to win \$2,500 cash; or
 - (d) But one simple thing necessary to win the fortune; or that you are to
 - (e) Do just 1 thing now: Send in \$3.00 and fill in your name on the winner's certificate;

- (32) That it "costs you nothing to win" merchandise prizes;
- (33) That "all that is wanted now is for you to try the products yourself and then talk about them to the neighbors";
- (34) That the \$1 spent by the contestant for the first assortment of goods is "just for advertising";
- (35) That any of respondent's messages are personal, by the use of such phrases as

- (a) A personal message from Tom Wood;
- (b) I will help you all I can;
- (c) Remember, I will help you all I can;
- (d) I want you to win;
- (e) You see, I want you to win;
- (f) I want to put you down as a winner;
- (g) Just to see you get started 'winning * * * (10,000 "free" certificates for \$1);
- (h) Fill in your own name on the (enclosed) \$1,000 check today. Rush it to me so I can make your name 'O.K.' I need it to qualify you—I'm waiting for it" (also for the \$1);
- (i) I want to help you all I can, so in addition to the \$3,500 all cash I will give you \$200 extra if you will follow my instructions now (i. e., provided you win);
- (j) You can't lose if you follow my instructions;
- (k) You can't possibly lose anything, if you follow my advice;
- (l) Follow my advice and suggestions—just as hundreds of other have done—and you will win the grand prize;
- (m) All these fortunate winners followed my advice and suggestions * * * reason why they won";
- (n) It's all arranged to send the first grand prize of \$3,500 to you—(if you will justify me in doing so);
- (o) For several days I've been expecting your winner's final certificate;
- (p) You have made a brilliant start—with the usual 14,999 points;
- (q) You are indeed most fortunate. Right at this very minute you are standing on the threshold of a marvelous opportunity;
- (r) I just couldn't let this evening pass without writing you this urgent note;
- (s) Winner's final certificate credited exclusively to (the contestant's name)— and to every other name upon receipt of \$1;

and any other statements and representations of like import.

Respondent further agrees to discontinue the issuance of—

- A "grand prize certificate" with the crediting of but 12,500 "points" or at any other time prior to the actual awarding of the grand prize; or
- A "winner's final certificate" with the crediting of but 14,995 "points" or at any other time prior to the actual awarding of the grand prize; or
- A "final primary points certificate" with the crediting of 14,999 "points" or at any other time prior to the completion of the 15,000 "points."

Respondent further agrees to publish all future "rules" and "regulations" in clear, readable type, conspicuously placed and with special attention called thereto in the first mailing.

Respondent also agrees to cease and desist from indicating a personal interest in the individual contestant, and from the use of letters purporting to be handwritten and of simulated "after supper" notes.

Respondent furthermore agrees to discontinue the use, in the manner heretofore employed as herein described, of alleged—

Points,
 Primary points,
 Final primary points,
 Gold certificates,
 Prize winning votes,
 Bonus gold certificates,
 Double gold certificates,
 Triple gold certificates,
 Cash certificates, contingent or otherwise,
 Facsimile "checks" for sums of money.

Respondent further agrees to cease and desist from awarding points or other units of credit toward the winning of a prize unless each point or unit of credit shall represent the same expenditure of money on the part of the contestant, or its equivalent in personal service.

Respondent furthermore agrees to cease and desist from using any progressive plan to sell merchandise unless every step or phrase of the plan is clearly set forth in the first mailing to a prospect, before any money or service is accepted, showing without ambiguity exactly what will be required of the prospect and what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward.

It is also stipulated and agreed that if the said Health-O Quality 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. (Oct. 3, 1934.)

0771. Vendor-Advertiser — Medicinal Preparation. — Vitamin Co., Hollywood, Calif., vendor-advertiser, is engaged in selling a medicinal preparation designated as "Kelvida", and in advertising represented:

KNOW YOUR GLANDS!

Modern science tells us that the ductless glands of the body control health, vitality, growth, and development, and that they greatly influence personality.

* * * Kelvida, the wonder food for your glands * * *

Kelvida is derived in part from *Macrocystis Pyrifera*, a sea plant which is said to contain all the known vitamins. It has achieved remarkable results in cases of malnutrition, diet deficiency, and the like.

* * * Kelvida can correct by supplying to your body the minerals and vitamins that may be lacking in your regular diet.

* * * Tests conducted in the schools show that *Macrocystis Pyrifera* peps up their appetites; makes for better bowel functioning; improves skin conditions (Acne, exzema, 'muddy complexion', etc.); benefits hair and brittle nails; gives greater mental alertness; increases resistance to childhood diseases (common colds were much less frequent); improves teeth and bone structures. * * *

* * * For Kelvida contains the vitamins and the essential minerals that are necessary to health—all of them. * * *

* * * So now I am doing a very unusual thing, a radical departure from one of the strictest rules of this company, I am sending you a sample in this letter.

* * * One family of five, including 3 children, all under ten, have taken Kelvida regularly ever since it has been available and have all been absolutely free from colds ever since using it. * * *

Kelvida is compounded from land and sea plants that are known to possess all the essential minerals and all the vitamins. * * *

* * * there is nothing better for glandular disorders than Kelvida.

* * * Read this leaflet carefully; it contains a vital message for all who want to get well and stay well.

Consequently, the average child cannot get too much Kelvida * * * hard, perfectly formed teeth, straight, sturdy bones, well-developed muscles, and ravenous appetites invariably follow the use of Kelvida for children. Kelvida will bring a youngster back to his normal diet in an amazing short time.

Experiments have shown that the regular use of Kelvida tends to keep the glandular system in a strong healthy condition, by supplying to the glands those vital minerals and vitamins * * *

So it goes, from the poor truck farmer all the way up to the manufacturer of an endless variety of prepared foods, all unintentionally conspire to deprive you of vital and indispensable components of your diet. It therefore becomes necessary to supply these deficiencies by other means, and this is the most important mission that Kelvida can perform for you.

It is the mission of Kelvida to restore to your body the necessary mineral elements and vitamins needed for its normal functioning. * * *

* * * Kelvida, therefore, composed entirely and absolutely of vegetable derivatives and contains no drugs, chemicals, * * *.

KELVIDA

IS USED FOR

| | |
|----------------------------|-------------------|
| Common colds | Eczema |
| Rickets | Acne |
| Neuritis | Mental depression |
| * * * | Nervous disorders |
| Bronchitis | Stomach troubles |
| Arthritis | Skin diseases |
| Rheumatism | * * * |
| * * * | Goiter |
| * * * | Obesity |
| Asthma | * * * |
| * * * | Anemia |
| * * * | |
| Diseases peculiar to women | |
| * * * | |
| * * * | |

If you are ill, take Kelvida to get well. Then when you get well, make Kelvida a part of your regular daily diet in order to stay well.

Kelvida when taken regularly according to directions, is an excellent normalizer and insurance against the ordinary as well as the more serious illnesses.

* * *

Kelvida has been found to be particularly helpful in the prevention of common colds, and in warding off many of the ordinary ailments to which children and grown-ups are so frequently susceptible. Kelvida has also been found to be especially beneficial in cases of rickets, neuritis, constipation, bronchitis, arthritis, rheumatism, fatigue, colitis, asthma, bowel trouble, backache, diseases peculiar to women, indigestion, insomnia, kidney trouble, mental depression, headache, nervous disorder, stomach troubles, skin diseases, intestinal indigestion, goiter, obesity, underweight, and anemia.

The respondent represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity and does not intend to resume such advertising in the future; and that the sale of such commodity is limited to the filling of unsolicited orders. Respondent 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 R. L. Dennis 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. 3, 1934.)

0772. Vendor-Advertiser—Mole and Wart Treatment.—Molex (Hollywood) Co., Los Angeles, Calif., vendor-advertiser, is engaged in selling "Molex" for the treatment of moles and warts, and in advertising represented:

A scientific, modern, safe, certain, and painless method that will remove moles, warts, and similar blemishes from the face or body without scarring or causing an open sore.

Medical authorities on diseases of the skin are practically unanimous in stating that all moles on face or body should be removed as they are a constant danger of becoming malignant and may develop into carcinoma (cancer) or sarcoma (tumor of the skin) following irritation or even a slight injury.

A solution of these basic ingredients has been the accepted treatment for moles, warts, and other cutaneous growths for many years in the important skin clinics and by the exclusive beauty specialists in continental Europe.

* * * used by physicians and clinics in Paris, Vienna * * * quick, safe, inexpensive, rid yourself of these ugly growths forever without leaving scars or sores.

How they may be removed by a scientific, modern, safe, certain, and painless method from face or body without scarring or causing an open sore.

It does not destroy the growth by burning or eating the mole tissue as strong acids, caustics, or electricity would do, but it kills the life in the cells that make up the growth, the lifeless growth then dries up and forms a scab, the natural healing process takes place underneath, the scab falls off leaving only the clean, healthy, scarless skin, no sore, no chance of infection or blood poison * * *

Molex does not destroy normal skin or tissues.

Molex is not only safe to use for the removal of these growths, but is an ideal treatment when other methods of removal have failed * * *.

Leading physicians warn against cancerous growths from moles.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is a safe or certain method for removing moles, warts, or other blemishes from the face or body;

(b) That moles, warts, or other blemishes can be removed from the body by the use of said preparation without leaving scars;

(c) That medical authorities on diseases of the skin are practically unanimous in stating that all moles on the face or body should be removed;

(d) That there is a constant danger of moles on the face or body becoming malignant, developing into cancer, or developing into tumors;

(e) That said preparation is used by clinics in Paris and Vienna;

(f) By inference or direct statement that said preparation is not caustic;

(g) That said preparation will not destroy tissue;

(h) That said preparation is selective in its action in that it will attack the cells that constitute the mole or wart without affecting the cells of other tissue;

(i) That said preparation will not destroy normal skin or tissue;

(j) That there is no chance of blood poison or infection from using said preparation;

(k) That said preparation is an effective treatment in cases where other methods of removal have failed;

(l) That leading physicians warn against cancerous growths from moles.

It is also stipulated and agreed that if the said Simeon Baldwin and S. A. Kaason 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. 3, 1934.)

0773. Vendor-Advertiser—Medicinal Preparation.—The Norma Co., Binghamton, N. Y., vendor-advertiser, is engaged in selling a medicinal preparation designated "Norma" and in advertising represented:

HIGH BLOOD PRESSURE

If you have those distressing symptoms of high blood pressure—thumping and pounding in the head, dizziness, unsteady gait, nervousness, and sleeplessness, go to any drug store and get a bottle of Norma, a physician's prescription, that gives relief from these symptoms so surely and so quickly, that improvement is often noticed the very first day it is used.

HIGH BLOOD PRESSURE SYMPTOMS

Do they worry you? Thumping and pounding in the head, dizzy spells, sleeplessness, nervousness, and lack of strength—these are the symptoms of high blood pressure, from which you may get quick relief through the use of Norma, a physician's prescription, that has a wonderful record in helping hundreds of sufferers from high blood pressure.

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 Norma is a competent treatment for high blood pressure without qualification by limiting it to merely a treatment of the symptoms;

(b) That it is a competent treatment for the relief of the symptoms of high blood pressure, except those symptoms due to functional and not organic causes;

(c) That it affords permanent relief of the symptoms indicated, because it furnishes only temporary relief; and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Norma 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 in evidence against it in the trial of the complaint which the Commission may issue. (Oct. 4, 1934.)

0774. Publisher—Pain Ointment.—The Washington Times Co., Washington, D. C., the publisher of the Sunday Herald, a Sunday 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 pain 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 defend before the Commission and waives the right to be joined as a party respond-

ent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 4, 1934.)

0775. **Publisher—Epilepsy Treatment.**—The National Farm News Publishing Co., Washington, D. C., the publisher of the National Farm News, a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of an epilepsy treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 4, 1934.)

0776. **Publisher—Cosmetic Crème.**—The Sun Printing & Publishing Association, New York, N. Y., publisher of the Sun, 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 cosmetic crème.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease-and-desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 5, 1934.)

0777. **Publisher—Reducing Salts.**—The Toledo Blade Co., Toledo, Ohio, publisher of The Blade, a newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a reducing salts.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease-and-desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 5, 1934.)

0778. Vendor-Advertiser—Poultry Worm Medicine.—Vitality Mills, Inc., Chicago, Ill., vendor-advertiser, is engaged in selling a poultry-worm medicine designated as "Happy Chick Wormer and Tonic", and in advertising represented:

Happy Chick Wormer & Tonic is a sure protection against coccidiosis and worms * * *.

Happy Chick Wormer & Tonic will dispel worms from laying hens * * *.

HAPPY CHICK WORMER & TONIC FOR WORMS—COCCIDIOSIS

For baby chicks or growing birds. Eliminates worms * * * successful treatment for coccidiosis * * *.

Happy Chick Wormer and Tonic, because of its worm-destroying properties, plus the fact that it is an exceptional all-round tonic, has proved its value in the treatment of worms in thousands of cases. * * * any treatment strong enough to remove worms in one application must contain poisonous amounts of certain ingredients which cannot help but injure the bird's digestive tract and lower the bird's resistance, which is the cause of worm infection in the first place.

Happy Chick Wormer and Tonic builds up resistance, vitality, and general health while it is removing worms * * *.

To keep the birds always free from worms, give a 5-day prevention treatment at intervals of about 30 to 60 days. * * *.

This treatment keeps the birds free from worms * * *.

Happy Chick Wormer and Tonic acts on the worms the first day, releasing them from the lining of the intestines and allows the bird to assimilate the full value of the digestible nutrients which she consumes. With tapeworm infection a thick mucus forms on the walls of the intestines, and the head of the tapeworm is buried deeply in this mucus. The worm treatment must be given the full 15 days in order to entirely remove all this mucus and get the head of the worm * * *.

Happy-Chick Wormer and Tonic * * *

You can depend on it as a * * * and germ destroyer.

It is a successful treatment for coccidiosis. * * *.

* * * give happy chick in the following manner as a worm preventative * * *.

To keep the birds always free from worms, give a 5-day prevention treatment, at intervals of about every 30 or 60 days. This keeps them free from 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 medicine is a competent treatment for poultry infested with worms unless such representation is limited to round worms.

(b) That said medicine is a competent treatment for, or a protection against coccidiosis.

(c) That the use of said medicine will keep poultry free from worms.

(d) That said medicine is a competent treatment for poultry infested with tapeworms.

(e) That said medicine is a germ destroyer.

(f) That treatments for removing worms in one application are detrimental to poultry.

(g) That said medicine is a worm preventative.

It is also stipulated and agreed that if the said Vitality Mills, 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. (Oct. 5, 1934.)

0779. Vendor-Advertiser—Cold and Cough Mixture.—W. K. Buckley, Inc., Rochester, N. Y., vendor-advertiser, is engaged in selling cold and cough mixture designated as "Buckley's Mixture" and in advertising represented:

* * * use it for stubborn old colds and bronchitis * * *.

Buckley's Mixture (triple strength) is still supreme when it comes to dealing a knockout blow to coughs, colds, or bronchitis. * * * Coughs and colds relieved with 1 dose—banished with 2—bronchitis of many years standing completely relieved with 1 bottle * * *.

No matter how stubborn or long standing your cough or cold, try Buckley's Mixture * * *.

Like a flash end coughs and colds.

It costs only a few cents to knock out a cough or cold with Buckley's Mixture (triple strength) because Buckley's is so supremely good that only a few doses are needed to subdue the toughest cough or cold * * *.

* * * Safe, sure, instant relief from coughs, colds, or bronchitis * * *
 * * * The most stubborn, racking cough swiftly yields to the powerful influence of Buckley's Mixture * * *.

Before bedtime stop that terrible cough of bronchitis * * *.

Stop that dangerous bronchitis cough—today.

Before bedtime knock out that bronchitis.

* * * your deep seated cough of bronchitis is under control.

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 Buckley's Mixture will "before bedtime knock out that bronchitis;"

(b) That Buckley's will "before bedtime stop that terrible cough of bronchitis", except that through the taking of the remedy at bedtime, or any other time the symptoms of bronchitis can be quickly relieved;

(c) That bronchitis or other coughs or colds due to organic disease will respond to Buckley's Mixture as effectively as would a functional bronchitis or cough;

(d) That Buckley's will end coughs and colds instantly, except as its action may be instantaneous in relief of such symptoms and conditions;

(e) That Buckley's is of triple strength since such statement premises existence of other strengths such as single or double strength, whereas such is not the fact;

(f) That effective results may be expected in the treatment of coughs or colds regardless of how stubborn or how long standing those ailments may be, in that such expressions indicate successful treatment in each and every case of coughs and colds.

It is also stipulated and agreed that if the said W. K. Buckley, 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. (Oct. 5, 1934.)

0780. Vendor-Advertiser—Medicated Ointment.—W. F. Gray Co., Nashville, Tenn., vendor-advertiser, is engaged in selling Medicated Ointment and in advertising represented:

OLD SORES HEAL TWICE AS QUICK

Any old sore or ulcer will heal up quickly and smoothly if you dress it daily with Gray's Ointment * * *.

If afflicted with—

| | |
|--------------|-----------------|
| Bolls | Frostbites |
| * * * | Broken Breast |
| * * * | Sore Nipples |
| Blood Poison | Old Sores |
| * * * | Sore Legs |
| Carbuncles | * * * |
| * * * | Weak Back |
| * * * | * * * |
| Fever Sores | Poisonous Bites |
| Felons | Tumors |
| * * * | Old Wounds |
| Piles | Ulcers |
| Fistula | Liver Complaint |

Rheumatism

* * * best and safest remedy * * *

For * * * boils, nail punctures, frostbite, and sores of all kinds, and to prevent blood poison it has no equal. When the child sticks a nail in his foot or Daddy cuts his hand an immediate application of Gray's Ointment will almost certainly prevent that awful blood poison * * *

* * * remedy for boils, sores and all external inflammations.

One box of Gray's Ointment will probably be enough for a boil, * * * nail puncture or new sore. For an old, stubborn leg sore it may take several doses. * * * By careful and persistent use, we believe it will cure most any old sore * * *.

Do you suffer with eczema?

For old sores it has no equal.

Gunshot wound.

Varicose veins.

I have varicose veins and when I knock my leg it causes an ulcer and I can't find any remedy or cure so good as your Gray's Ointment.

For weak ankles.

Used for varicose ulcers.

A carbuncle easily cured.

Swollen ankles.

* * * My legs and ankles had been very badly swollen for ten years. After a few applications of your wonderful ointment, they are now down to the natural size and free from pain.

* * * I have used it now for twenty-six years, and in that time I think I have saved a number of lives from blood poison.

Carbuncle cured.

Heals boils quickly, safely.

No use to suffer more. Just use Gray's ointment. Your boil or carbuncle will heal right up. Gray's Ointment draws out poison pus and core. Pain ends quicker. Healing starts at once and often saves lancing. Absolutely safe.

How to heal sores and boils.

The tested medication of Gray's Ointment kills dangerous germs, deadens the worst pain, draws out poison pus, and then heals the tender tissues in a natural and healthful manner. It is a quick, sure, and proven remedy for any sore, boil, carbuncle * * *.

Painful ulcers yield to this.

The quick-healing, infection-destroying action of Gray's Ointment rapidly heals stubborn ulcers and old sores. It helps nature by killing infection and keeping out the air. Nothing else so sure. Absolutely safe.

Old sores heal twice as quick.

Any old sore or ulcer will heal up quickly and smoothly if you dress it daily with Gray's Ointment. This will draw out the soreness, end infection, make the scab form, and start healthful healing. Absolutely safe and reliable. Quick and sure.

Ugly pimples heal up quick.

Just spread Gray's Ointment over ugly pimples and they heal right up, leaving the skin smooth and fair. It draws out the poison and ends redness and soreness. Gray's Ointment is safe, sure, and quick.

Skin eruptions ended quickly.

Pimples, rash, boils, and all kinds of skin eruptions just can't help but heal quickly and smoothly when you use Gray's Ointment. It draws out the poison, kills infection, heals, and ends the trouble. Nothing like it. Safe, sure, and quick.

Gray's ointment.

Aids materially in the relief of boils, carbuncles, felons * * * frost-bite * * * neuralgic pains in the side or chest * * * stiff cords.

It is also very helpful in the treatment of scratches, cracked heel, splint * * * of horses.

Sores, boils are healed promptly by Gray's Ointment.

Boils, old sores * * * have been healed * * * with Gray's Ointment.

I have tubercular sores, and Gray's Ointment is the only thing that I have found which does me any good * * *.

* * * I was troubled with a very bad sore on my nose for eighteen years. Several of my friends thought at times it was a cancer and advised me to have it treated. Several doctors treated it and one advised me to have the sore cut out * * * I determined to try the old reliable Gray's Ointment, which gave quick relief. I kept using it until the sore was entirely well.

* * * It cures where all else fails * * *.

In a stipulation filed and approved by the Federal Trade Commission on 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 medicated ointment is a competent treatment for—

| | |
|------------------------------------------------------------------|-----------------|
| Boils | Piles |
| (except as an aid in relieving the pain and discomfort of boils) | Frostbite |
| Old sores | Broken breast |
| Blood poison | Sore nipples |
| Carbuncles | Sore legs |
| Fever sores | Weak back |
| Felons | Poisonous bites |
| Fistulas | Tumors |
| | Old wounds |

Ulcers
 Liver complaint
 Rheumatism
 Nail punctures
 Eczema
 Gunshot wound
 Varicose veins
 Weak ankles
 Varicose ulcers

Swollen ankles
 Leg sores
 Pimples
 Skin eruptions
 Neuralgia pains
 Stiff cords
 Tubercular sores
 Cancer.

Scratches, cracked heel, or splint of horses;

(b) That said medicated ointment is either safe or sure;

(c) That said medicated ointment will prevent blood poison;

(d) That said medicated ointment will kill germs, or kill infection;

(e) That said medicated ointment is a cure for any ailment;

(f) That said medicated ointment is effective in cases where all other treatments have failed;

and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said W. F. Gray 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. 10, 1934.)

0781. Vendor-Advertiser—Medicinal Preparation.—Dr. D. Jayne and Son, Inc., Philadelphia, Pa., vendor-advertiser, is engaged in selling a medicinal preparation (designated as “Dr. Jaynes Byro-da Tonic Pills” and “Dr. Jaynes Tonic Pills”) and in advertising represented:

* * * New Discovery is 4 Times Faster.

New vigor for men past 40.

No man need be discouraged because age, overwork, nerve strain, and worry have lowered his vital powers. Nerve force and manly vigor are quickly replenished as rich, new blood revitalizes tired nerves and weak organs. Plenty of iron in the blood means pep and power, energy and endurance. Try Dr. Jayne's Tonic Pills. This patent tonic is guaranteed by every druggist. Red blood is completely renewed in 6 weeks. Make new blood richer in iron! Strengthen tired nerves and weak organs.

Weak, thin, nervous? Gain new pep, weight, and red blood 4 times faster.

Doctors have always recommended iron as a quick way to renew pep, energy, and vitality by rebuilding the red blood cells * * * just as you get tremendous power by applying a spark to gasoline. Weak, thin blood—tired, frayed nerves—exhausted, weary bodies and vital organs are refreshed and revitalized as never before. Hospital reports say “Red blood cells increased 25% in 3 weeks”—“No case failed to respond” and “far superior to food iron.” Red blood cells are completely renewed in only 6 weeks. Start today to make your blood richer in iron. In power to rebuild your rundown system, put flesh on skinny limbs and color in hollow cheeks; to strengthen tired nerves and weak organs, and to get rid of weakness, headaches, nervousness, sleeplessness, chronic fatigue and other danger signs of weak, thin blood. Ask for famous prescription—Dr. Jayne's Tonic Pills. * * *

* * * Red blood is completely renewed in 6 weeks. Make new blood richer in iron! Strengthen tired nerves and weak organs! Get rid of weakness, headaches, nervousness, underweight and other troubles due to weak, thin blood * * *.

* * * They purify the bowels, aid the blood to throw off the acids, poisons, and impurities that spoil the complexion and cause headaches and other pains. They also help to regulate the liver. It's the liver in which the greatest amount of the red blood corpuscles are stored and every care should be taken to keep it working properly, freed from impurities that hinder its function.

Weak, tired, nervous women now gain vigor, weight, and strength 4 times faster! * * *

Try this quick test to add firm flesh, * * * and fatigue, weakness, nervousness, skin blemishes, poor complexion and other troubles, due to weak, thin, impoverished blood.

* * * This famous prescription is four times faster than iron, * * * Rich, new blood builds up firm flesh, new strength in weak nerves, and restores energy to weakened run-down systems.

Red blood is renewed in 6 weeks! Dr. Jayne's Tonic Pills helps you to new, rich, red blood * * *

* * * Thousands of men and women * * * * * stopped sinking further into ill health and began rapid recovery through the use of Dr. Jayne's Byro-da Tonic.

I feel sure that you, too, will be amazed to see the almost instant response of your system to the vitalizing influence of this potent tonic. Very often even the very first trial increases your appetite and begins to infuse new strength in weak organs by rebuilding the thin, watery blood into rich, red blood—the kind that in turn forms firm, solid flesh, powerful muscle, and dyes your cheeks a rich pink.

* * * If you had magic spectacles you could actually see the red blood corpuscles renewed completely * * *.

If you are weak, nervous, rundown, and underweight and have pale cheeks or sallow complexion—if you are always tired, out of sorts, sleep badly and have frequent headaches—your blood needs a new supply of iron!

This iron must simply be supplied in addition to your ordinary diet in order to restore muscular strength, fill out scrawny figures and flat chests, to improve vitality and increase nerve force.

The iron in the Byro-da Tonic is so treated that it almost instantly begins to improve both the color and the number of red blood corpuscles in your blood * * *.

Weak, thin, nervous? Gain new pep! Pounds of flesh.

Famous doctor's prescription helps to add firm flesh, build up vigor * * * Truly restores the "Spark of Life"—* * * Blood is actually renewed in only 6 short weeks! Firm flesh begins to form, sallow cheeks blossom, dull eyes sparkle, nerves calm, sleeplessness, fatigue, headaches, and dizziness vanish * * *.

New Vigor—Red Blood—Nerve Force

No man need be discouraged because age, overwork, nerve strain, and worry have lowered his vital powers. Nerve force and manly vigor are quickly replenished as rich new blood revitalizes tired nerves and weak organs. Plenty of Iron in the blood means pep and power, energy and endurance. Try Dr. Jayne's Tonic Pills.

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 recommended for "men past forty";

(b) That said medicinal preparation will produce manly vigor, or that it will revitalize weak organs;

(c) That said medicinal preparation is an aphrodisiac, or that it in any way affects the sex organs;

(d) That said medicinal preparation is a competent treatment for nerve strain, worry, chronic fatigue, underweight, impoverished blood, sallow complexion, or skin blemishes; or a treatment for lowered vital powers.

(e) That said medicinal preparation "acts four times faster"; unless limited to iron alone.

(f) That said medicinal preparation will completely renew red blood in six weeks or at all;

(g) That health can be renewed by the use of said medicinal preparation;

(h) That said medicinal preparation will improve the blood, or the blood color unless such representations are limited to cases of nutritional anemia; or simple anemia due to blood loss;

(i) That by the use of said medicinal preparation a person will be able to "get rid" of any ailment;

(j) That said medicinal preparation will regulate the liver;

(k) That said medicinal preparation will purify the bowels; and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Dr. D. Jayne and 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. (Oct. 17, 1934.)

0782. Vendor-Advertiser—Candies.—Casterline Bros., Chicago, Ill., vendor-advertiser, is engaged in selling candies and in advertising represented:

Our men now average up to \$10 a day with sensational new red hot penny candy deal—including prizes—Oh Henry and Baby Ruth Bars.

Thousands of restaurants, groceries, candy stores, beach and park concessions, lunch stands, etc., now eager to buy this Big Money-Making deal.

One-cent candy sells fast to adults and kids alike—they'll spend pennies when they won't let go of dimes and quarters. Deal consists of huge counter

display crammed full of 5 pounds of penny candy and 50 free prizes (Popular Novelties and 5¢ Candy Bars) and One Grand Prize, all given free on penny candy sales. Takes in \$3 retail. Costs merchant \$2. Your Profit up to 33½ percent each deal—and most stores buy 2 to 6 deals weekly. Our men now averaging 20 deals a day!

We want men with cars.

Protected territories still open. Quick action necessary. Wire or write for free details and special startling offer today!

Casterline Brothers,

4541 Ravenswood Ave., Dept. 800, Chicago, Ill.

A Smashing New Penny Candy Prize Deal!

WIN A REAL PRIZE FOR A PENNY. GREEN CENTER WINS COMPLETE TABLE TENNIS SET. RED CENTERS WIN CHOICE OF OTHER PRIZES.

LAST SALE WINS LARGE BOX Oh Henry Caramels.

EVERYBODY HAS PENNIES TO SPEND. PENNIES MAKE DOLLARS FAST!

PICTURE of Box of Candy with Prizes.

Featuring a large major prize in addition to many intermediate prizes of Popular Novelties, 5¢ Candy Bars, etc. All given free on penny candies. A huge box of Oh Henry Caramels 7 x 11 in. given Free for last prize. Dealers sell out a deal a day!

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 dealers or salespersons in excess of the average earnings of the active full time dealers or 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 dealers or 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 dealers or 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.

Respondent further stipulates and agrees to cease and desist from distributing to prospective agents or salespersons any prize deal or other device which may be used in conducting a lottery for the disposal of said merchandise.

It is also stipulated and agreed that if the said W. B. Casterline 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. 17, 1934.)

0783. Vendor-Advertiser—Premium Sales Plan.—The National Sales Expansion Co., New York, N. Y., vendor-advertiser, is engaged in selling knives and forks for premiums to be given customers for retail dealers, and in advertising represented:

Attention, high-grade salesmen: Up to \$12 to \$18 daily selling retail dealers new advertising plan; positive hit, wonderful repeater. National Sales Expansion, 44 East 32nd Street, New York.

As a part of the said advertising plan, the respondent furnishes the retail dealers with a window poster as follows:

We give you this new stainless steel marballn handles \$2.50 caving set. Stainless steel carving set—\$2.50 value—for only 69¢—Marballn non-burn handles—for only 69 cents. In appreciation of your patronage. Get yours today—don't delay.

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) Not to 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) Not to 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) Not to represent the "value" of any article of merchandise to be in excess of the regular retail price thereof; and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Sidney Leibowitz 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. 17, 1934.)

0784. Publisher—Cold Remedy.—The Bulletin Co., Philadelphia, Pa., the publisher of the Bulletin, a newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a Cold Remedy.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 24, 1934.)

0785. Publisher—Glycerin Tablets.—The News Syndicate Publishing Co., Inc., New York, N. Y., the publisher of The News, a newspaper of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of glycerin tablets.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 24, 1934.)

0786. Publisher—Treatment for Rheumatism.—The United Publishing Co., Kansas City, Mo., the publisher of Home Friend Magazine, a magazine of wide interstate circulation, printed, published, and

circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a treatment for rheumatism.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 24, 1934.)

0787. **Publisher—Radio Sales Proposition.**—Irwin Publishing Co., Chicago, Ill., the publisher of *Help Wanted*, a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a radio sales proposition.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Oct. 24, 1934.)

0788. **Publisher—Treatment for Rheumatism.**—Curtis-Martin Newspapers, Inc., Philadelphia, Pa., the publisher of the *Philadelphia Sunday Inquirer*, a Sunday 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 treatment for rheumatism.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist

order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 1, 1934.)

0789. Vendor-Advertiser—Hair Dye.—The Kenton Pharmacal Co., Covington, Ky., vendor-advertiser, is engaged in selling a hair dye designated as "Brownatone" and in advertising represented:

* * * just tint those streaks or patches of gray hair to your natural shade—whether blonde, brown, or black.

* * * If Brownatone does not give your gray, streaked, dull, or faded hair its natural color, youth, and luster, your money back. * * *

Only by the use of a stain or tint is it possible to reproduce, with a fidelity that defies detection, the exact, original, natural shade * * *.

The ultimate shade is regulated by the original color of the hair and the amount applied * * *.

Brownatone permeates the hair entirely, from center to surface * * *.

* * * when nature offers you again, in the ingredients of Brownatone exactly the same shade with which it originally chose to color your hair.

When I started using Brownatone six years ago, my hair was thin and short. But now it is beautifully long and heavy * * *.

Bring back to unsightly gray, faded, or bleached hair its natural color and beauty. * * *.

* * * Tint it instantly to its natural youthful shade and lustre * * *.

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 hair dye will impart an original or natural color to gray, streaked, or faded hair, or do more than impart a naturally appearing color.

(b) That the use of said hair dye will produce a heavy growth of hair.

(c) That said hair dye will penetrate the hair from center to surface,

and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Kenton Pharmacal 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. 1, 1934.)

0790. Vendor-Advertiser—Device for Treating the Prostate Gland.—A. T. Abell, Alhambra, Calif., vendor-advertiser, is engaged in selling an electrical device designated as “Glanray” for treatment of the prostate gland and in advertising represented:

Men after 40—what? Do you suffer from pains in back, legs and feet, mental depression, frequent night risings, nervousness, and irritability? A scientist explains a chief cause of such ailments and explains a remarkable home aid without diet or drugs.

Men, after 40 what? Pains in extremities, no pep, depressed. Beware of prostate gland disorders.

Why men slow down after 40. After 40, many men are handicapped in business by pains of advancing age, mental depression, frequent night risings, nervousness, and irritability. A scientist discloses a chief cause of such ailments and described a new, drugless, nonsurgical home method to avert them.

Do you suffer from pains in back, legs and feet, mental depression, frequent night risings, nervousness and irritability? A scientist explains a chief cause of such ailments and explains a remarkable home aid without diet or drugs.

Is old age a necessary evil? * * * To many men past 40 or 50, old age is a constant suffering with such ailments as pains, aches, nervousness, lowered vitality, bladder weakness, frequent nightly risings and broken sleep. Do you realize that these distressing symptoms are often signs of prostate gland failure? * * * Some authorities state that 65 percent of men past 40 are victims of prostate disorder. * * * Men everywhere report remarkable results after using “Glanray.” If you suffer from any of the above symptoms which are usually an indication of prostate trouble, write to Dr. Abell, 125 West Main St., Alhambra, California.

Many men past 40 go on blindly blaming old age for their lack of strength, vigor, and vitality. These symptoms are often warnings of prostate failure. If you suffer with chronic constipation, fatigue, bladder weakness (nightly risings), foot, back and leg pains, write today to Dr. Abell.

If you feel yourself slowing down—if aches in back, legs, and feet constantly torment you—if you feel depressed, irritable and fatigued—if you are troubled with frequent night risings—then you should read this book to the last line. For it reveals a most frequent cause of such ailments—disorder of the prostate gland.

I soon discovered the utter futility of drugs, surgery, or massage to bring lasting relief. So with the aid of scientists I experimented for years in the development of the device which has now become famous as Glanray.

Glanray is a scientific method of stimulating the prostate gland, with the aim of restoring it to normal functioning.

Why wait, stop suffering, order your Glanray now. * * * Ship postpaid in plain wrapper your New Model Glanray instrument together with full instructions in treating my own case of prostate and kindred disorders.

New deal to prostate sufferers. * * * Glanray is different from any and all appliances now on sale.

* * * If anyone is suffering with prostate trouble they should send for your appliance at once. I will gladly recommend it to anyone who is afflicted with this dreaded and painful ailment. I wish it were within my power to tell every prostate sufferer my story and to show them how to get immediate relief from the use of Glanray.

Are you troubled with one of these afflictions? If you are a victim of one or more of the ailments listed below, this booklet is intended for your careful reading. It explains how you may correct a most frequent cause of such ailments as—

- | | |
|--------------------------|-----------------------------|
| frequent night risings | lack of energy |
| bladder weakness | nervousness |
| backaches and headaches | worry and fears |
| arm, leg, and foot pains | sexual impotence |
| sciatica | irritability |
| neuritis | insomnia |
| chronic constipation | decreased mental efficiency |
| piles (hemorrhoids) | |

* * * * *

65% OF MEN PAST FORTY

VICTIMS OF PROSTATE DISORDER

* * * * *

Often men mistake the symptoms of prostate disorder for bladder trouble, and casually define their pains and aches as sciatica, rheumatism, indigestion, etc., when such are often really effects rather than causes. * * *

For prostate gland is the root of many causes of bladder weakness. One of my patients suffered from this affliction of bladder trouble for years, using various remedies in vain. For years he had been obliged to rise three or four times a night to urinate. After treatment with Glanray for two weeks, the trouble began to clear up. * * *

It is designed to aid nature in eliminating the cause of prostate disorder. * * *

I wish it were within my power to tell every prostate sufferer my story and to show them how to get immediate relief from the use of Glanray."

YOU FEEL YEARS YOUNGER IN SEVEN DAYS OR MY TREATMENT FREE!

Suppose you came into my office and I said to you: "I will undertake to treat your case and you pay nothing until after the treatments have been taken. At the end of that period, if my treatments have not cleared up your case of prostate disorder, you pay me nothing. * * *"

That, in effect, is the offer I make you with this Glanray appliance. * * * But don't put off this treatment a single unnecessary day. Procrastination is the thief of time. And delay only causes you needless suffering, and placing you closer and closer to the day when you may have to undergo a serious operation to remove this condition.

Glanray method of overcoming prostate disorder.

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 device is a competent treatment for disorders of the prostate gland, unless such representations are qualified to indicate that beneficial results may be expected only in cases of hypertrophy of the prostate gland;

(b) That the use of said device is a competent treatment for failure of the prostate gland;

(c) That the use of said device is a competent treatment for the following ailments or conditions, unless such representations are qualified to state that the device is effective only when those ailments or conditions are caused by hypertrophy of the prostate gland:

- | | |
|--------------------------------------------|----------------------------------|
| 1. Pains in the back, legs, feet, or arms. | 9. Backache. |
| 2. Mental depression. | 10. Headache. |
| 3. Night risings. | 11. Sciatica. |
| 4. Nervousness or irritability. | 12. Neuritis. |
| 5. Lowered vigor, vitality, or strength. | 13. Chronic constipation. |
| 6. Advancing age. | 14. Piles or hemorrhoids. |
| 7. Bladder weakness. | 15. Sexual impotence. |
| 8. Insomnia. | 16. Decreased mental efficiency. |
| | 17. Indigestion. |
| | 18. Rheumatism. |

(d) That any of the ailments or conditions mentioned in paragraph (c) are frequently caused by or are symptoms of prostate gland trouble;

(e) That the use of said device will restore the normal functioning of the prostate gland;

(f) That said device is different from all other appliances now on sale;

(g) That the use of said device will afford lasting relief;

(h) That said device is recommended for "anyone" suffering from prostate trouble;

(i) That the user of said device will feel younger in seven days, or within any other definite period of time;

(j) That the prospective purchaser may procure said device without the payment of any money until after using it;

(k) That delay in using said device may result in a surgical operation being necessary;

(l) That the use of said device will overcome prostate disorder.

(m) That 65%, or any other proportion not supported by reliable statistical evidence, of men past forty years of age are victims of prostate disorder;

and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said A. T. Abell 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. 1, 1934.)

0791. Vendor-Advertiser—Greeting Cards.—Gartner and Bender, Inc., Chicago, Ill., vendor-advertiser, is engaged in selling Greeting Cards, and in advertising represented:

ENGRAVE-UR-OWN PERSONAL CHRISTMAS CARDS

* * * Box 21 assorted cards * * * with sender's name Script-N-Graved in gold—Watch writing raise—change to gold—transform itself to defy detection from finest steel engraving. It's startling, dumbfounding.
* * *

Earn up to \$10 Daily Easy

* * * Customer's actual signature in gold on every card!
* * * Everyone wild to send greetings with own, actual signature engraved in gold.
* * * \$10 daily profit from now 'til Christmas.

Respondent represents and asserts that since it acquired the business of its predecessors on April 1, 1934, it has not employed agents, salespersons, or dealers to sell said merchandise in interstate commerce. In the event that respondent should hereafter follow such a method of merchandising it is stipulated and agreed

That respondent will not represent or hold out as a chance or opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons under normal conditions in due course of respondent's business.

Respondent further stipulates and agrees in soliciting the sale of and selling said greeting cards in interstate commerce, that it will not publish, circulate, or cause to be published or circulated any statement or representation directly upon the responsibility of the 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, that it will not represent in advertisements, or otherwise

(a) That said greeting cards are engraved or " 'Script-N-Graved' ";

(b) By use of such phrases as " Engrave-Ur-Own " that a purchaser can engrave his own name upon the cards;

(c) That the writing on said greeting cards so closely resembles engraving that it defies detection;

(d) That any writing or script on said cards is in gold, or that the signature will be engraved in gold;
and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Gartner and Bender, 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. (Nov. 14, 1934.)

0792. Vendor-Advertiser—Grocery, Drug, and Toilet Articles.—McConnon & Co., Winona, Minn., vendor-advertiser, is engaged in selling various grocery, drug, and toilet articles to house to house dealers and in advertising represented:

Only a certain number of these "no-investment" propositions are open.

Starting average \$30 weekly. Steady increase up to \$75.

\$50 A WEEK For the Right Man!

I now have a few exceptional opportunities open for a limited number of ambitious, hard-working men.

UP TO \$100 IN 6 MONTHS!

Within 6 months after starting any average good worker becomes experienced enough to earn up to \$100 in a week.

Starting average \$30 weekly. Steady increase up to \$100 for right man.

Experienced workers make \$3,500 to \$4,500 a year. Hard times are unknown in this 42-year-old business.

* * * start at \$25—\$40 a week in either town or country.

Many make \$75 per week. There have never been hard times or layoffs in this business.

There are only a limited number of openings.

Right along the above line, you naturally have to make yourself acquainted with McConnon & Company before they could possibly afford to give you a big shipment of goods on credit this way. It is the same as though you went into a store where you were not known. They would ask you to let them have the names of some people who know you and would undoubtedly investigate before you could open a "charge account."

Most McConnon dealers operate under the McConnon credit plan which is almost exactly like the "charge account" you would run at your local store. Naturally, in extending such credit we want to feel that we know you and can have confidence in you. In getting started on a credit basis with McConnon, all you will need is to have responsible friends vouch for you. Once they vouch for you there is no red-tape or unnecessary delay. Your merchandise is shipped to you promptly and you can start making profits from the very first day. The whole thing is made so simple and easy that some of those who are reading these words are almost sure to think there is a "catch" in it someplace. There is no "trick", no "hook", no "catch" in getting into a credit business with McConnon's. You can be absolutely positive of that.

Upon the application form sent with the form letter and booklet appears space for the names of "Character references", but no mention is made of the fact that two responsible guarantors will be required before credit is extended.

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) Not to make unmodified representations or claims of earnings of salespersons in excess of the average earnings of respond-

ent's active full time salespersons achieved under normal conditions in the due course of respondent's business;

(b) Not to represent or hold out as a chance or an opportunity any amount in excess or 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) Not to 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;

(d) Not to represent that the openings for respondent's proposition to wagon-men are limited or few, so long as respondent advertises generally for such agents;

(e) Not to conceal the fact that responsible guarantors must be furnished by the salesperson, or to imply by inference or otherwise that only character references will be required; and not to make any other claims or assertions of like import.

It is also stipulated and agreed that if the said McConnon & 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. 19, 1934.)

0793. Vendor-Advertiser—Feminine Hygiene Preparations.—Martha Beasley, Detroit, Mich., vendor-advertiser, is engaged in selling Feminine Hygiene Preparations, and in advertising represented:

ONE WOMAN TO ANOTHER

Don't worry or be alarmed when nature fails. You can depend on a married woman's secret. End pain and delay now. I positively guarantee my successful "Special Relief Compound" to be quicker acting than pills or tablets. Safe, harmless—Wonderful testimonials. Used by physicians. Send \$2. Special Double Strength \$3. Information. Martha Beasley, Dept. 45, Box 22 Northwestern Station, Detroit, Michigan.

Ladies, when unnaturally delayed or irregular, write Martha Beasley, Box 228, Northwestern Station, Detroit, Michigan, for FREE information on proven treatment. Safely relieves cases long overdue. Used by doctors 25 years. No harm, no pain, or interference with work. Mail \$2. Double strength, \$3. Free sample periodic pain relief tablets to all who order or wrote. No obligation.

One Woman to Another

Don't worry or be alarmed when nature fails. Get a married woman's secret. End pain and delay now. I positively guarantee my successful "Special Relief Compound" to be quicker acting than pills or tablets. Differs from others. A reliable favorite compound of physicians for over 25 years. Praised by happily

married women everywhere. Often quick painless relief. Absolutely safe and harmless. Private information from a married woman with order. Send \$2. Special double strength \$3. Two for \$5. Literature free.

Martha Beasley, Box 23-33, Northwestern Station, Detroit, Michigan

Ladies don't worry about delayed periods—write Martha Beasley at once.

The Femaide formula is a reliable favorite compound of physicians and has been in extensive use for over 25 years, being quicker acting than pills or tablets.

Femaide usually relieves when others fail.

Martha Beasley Institute of Feminine Hygiene

Femaide relief compound treatment is the best, quickest, simplest, most beneficial and effective treatment being used today to assist the functions in relieving obstinate and abnormal delay.

I am sure, if you are distressed, that you would give a great deal to gain peace of mind—freedom from uncertainty and experience relief from disturbing doubts and worry.

I am confident you will be delighted once you have used Femaide, and from then on you will always wish to have the safety of a supply on hand should you be troubled again.

Femaide is safe and easy to take.

Tempo tablets give amazingly fast results, usually in five to seven minutes—backaches go, spasmodic pain eased * * *.

It has been found to act almost miraculously in some of the most distressing or stubborn cases where other treatments might fail. * * *

Tempo Tablets

Science has discovered a new formula that quickly and effectively banishes menstrual pain.

Other Uses of Tempo Tablets

Toothache—Arthritic Pains—Rheumatic Fever

* * * It is beneficial in toothache * * * Tempo tablets are one of the most efficient combinations of medicines for the general relief of pain.

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) Directly or by reasonable implication that any of said preparations is an abortifacient.

(b) That any of said preparations is guaranteed to be successful.

(c) That any of said preparations will “end” pain or delay.

(d) That any of said preparations will relieve stubborn cases of delayed menstruation.

(e) That users of any said preparations will gain peace of mind or be relieved of worry, alarm, uncertainty, or doubt.

(f) That any of respondent's preparations sold for use in feminine hygiene is miraculous or is a married woman's secret.

(g) That respondent's "Tempo Tablets"

1. Will banish menstrual pain

2. Are a competent treatment for toothache, arthritic pain, or rheumatic fever.

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of and selling said preparations in interstate commerce to cease and desist from using the word "Institute" as a part of her trade name.

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 her in the trial of the complaint which the Commission may issue. (Nov. 23, 1934.)

0794. Vendor-Advertiser — Dandruff Treatment.—Alwin Products, Inc., New York, N. Y., vendor-advertiser, is engaged in selling a treatment for the hair, dandruff, and baldness, designated as "Ambergren", and in advertising represented:

We have today received your letter asking for information how to correct hair troubles and how to regrow hair.

In Far East India, Bal-Dava, meaning hair medicine, has been used for centuries. That is why baldness is practically unknown to the millions of people there. In the accompanying enclosures we will tell you how we have taken Bal-Dava and prepared it for use here. We call it Ambergren.

Until now if we had hair troubles, if we had dandruff, or if our hair was falling out no one could definitely tell us what to do to correct the trouble, but if you will read the information that we are sending you with this letter, you will understand that hair troubles are now no longer a question of guessing how to correct them and how to save our hair.

Ambergren is something new and entirely different from anything you have ever had. You will be delighted with it. It will help you get real results. It will help put your scalp and hair in condition so that nature can function, to regrow your hair.

In offering Ambergren we are telling you about a real treatment for your hair and scalp that will definitely aid you in getting the results you seek. It will pay you to read carefully the information we are sending you. Ambergren is helping many men and women to correct their hair troubles and to regrow lost hair.

This is the first time that you have the opportunity to do something definite, for your hair without guessing. When you use Ambergren you know in advance that you will get results. We back this statement with our guarantee that Ambergren must help you in 90 days, or your money back.

Proof of the results Ambergren gives users.

Very beneficial.

Says really promotes hair growth.

Delighted with results.

Covers bald spot with hair.

Started new crop of hair.

Grows new hair.

Consequently science has neglected the study of the hair. The result is that we are becoming increasingly bald, and literally hairless * * * even on our heads where we need and want plenty of healthy hair.

Between the skull and the scalp is a layer of fatty tissue. The follicle from which the hair grows derives its nourishment and strength from this fatty tissue which surrounds it. This tissue nourishes and brings forth the hair and is itself in turn nourished and built up by the nourishment brought to it by the blood. When therefore the blood supply is wholly or even partly cut off from the scalp area, the fatty tissue is starved and decreased. The result is loss of hair, diseased and weakened condition of the hair, alopecia, dandruff (seborrhea capitis) psychosis, and other ailments of the hair and scalp.

In healthy hair, natural oily exudations lubricate the hair and help to keep it in prime condition. Each hair is hollow, and through it flows this oily substance that keeps it pliable and in condition. This lubricates the hair so that a person who uses nothing on their hair, if they rub their hand over their hair would notice that their hand would be slightly oily. This natural oil even has a slight odor which may be noticed. We all of us know this. We know that this oily substance emerges from each hair its entire length, through tiny pores in the hair. Each hair is thus taken care of by nature so that it shall remain soft, pliable, and beautifully lustrous.

AMBERGREN STOPS EXCESSIVE FALLING HAIR (ALOPECIA)

Falling hair means that unless prompt action is taken to stop it and to correct the trouble, you will be BALD.

Even after the old starved hairs have fallen out the live roots may still be there, which when the fatty tissue has been rebuilt, by the continued application of Ambergren may be stimulated and the dormant roots awakened. The regrowing process is then set in action to replace your lost hair. In cases of falling hair (alopecia) it is Ambergren's action of stimulating the circulation of the blood to the scalp, helping to build up the fatty tissue, and aiding the dormant hair roots to produce new hair that does the job.

DANDRUFF (SEBORRHEA CAPITIS)

Dandruff is one of the danger signals that shows us that something is wrong. There are, of course, a great many kinds of dandruff, varying from the ordinary light, tiny flakes of ordinary dandruff, to the large dandruff flakes or scales of eczema and other diseases. Most cases of dandruff, however, are the ordinary flaking of the epidermis caused by natural shedding of the skin plus scalp exudations. Dandruff can be made to disappear by washing the scalp, but this does not correct the trouble. The scalp and the tiny glands that cause this exudation must be put in order before we have accomplished anything.

Ambergren corrects dandruff by correcting the causes of it; that is it helps to rapidly bring the glands to a healthy condition necessary to the growth of hair.

Ambergren corrects itching scalp by correcting the reason for it. It cleanses the head, of the germs or parasites, that may be causing the itching. It alleviates excess dryness of the scalp and helps to regulate the glands. This is invaluable in putting the scalp in a healthy condition."

HAIR TROUBLES

Hair troubles such as falling hair (alopecia), dandruff, (seborrhea capitis), excessive dryness or excessive oiliness of the hair or scalp, eczema, psychosis,

psoriasis, and other common disorders of the hair and scalp are in most cases our own fault and the result of our own carelessness and neglect. Some cases yield easily to treatment, other cases are more difficult. It is impossible to tell just how long it will take to correct the trouble. But it is safe to say that almost all cases will yield to treatment when you use Ambergren regularly as directed. You cannot correct your hair troubles and grow new hair in a week nor in a month, any more than you can cure whooping cough or tuberculosis in a few days. If you have neglected your hair for years, do not expect to correct the trouble in days. It cannot be done. Nature works slowly. Ambergren corrects the cause of the trouble. Then nature can work and do its part. Ambergren is not a miracle worker. If you want a miracle you will be disappointed. But if you want scientific treatment that will, if properly used, give you results then use Ambergren.

PROMOTING THE GROWTH OF THE HAIR

After Ambergren has succeeded in correcting the cause of the hair trouble, and when your scalp is in proper condition, so that sufficient healthy fatty tissue is between the skull and the scalp, and the scalp and hair also in healthy condition * * * When the roots that have been dormant have been stimulated to action by Ambergren * * * then nature is able to work. Then is the time when this healthy condition must be kept up and maintained by continued use of ambergren, because then these dormant hair roots are starting to produce tiny hairs.

It takes time for hair to grow. Normal healthy hair grows so slowly that it takes a month or more in the growth of strong healthy full grown hair, before we can notice that it has grown at all. New hair grows very much slower.

Ambergren, however, is completely different from anything you have ever used * * * a scientific hair medicine, discovered in the Far East and perfected in our modern laboratories, tested and approved by many users: who tell of really remarkable results.

Here's a startling fact: Of all the Ambergren sold on a money-back guarantee of satisfaction, less than a dozen have ever asked us to refund their money. Do you ask for better proof that Ambergren does all that we claim and all that you can expect?

Just another word * * * your hair condition did not happen over-night. The chart you sent in shows that it took quite a while. May we ask that you keep this in mind? Do not expect miracles of Ambergren. It takes time to heal anything of a serious nature * * * your hair is not different * * * it will take time to regrow hair, and for you to acquire the healthy crop that you once possessed. Ambergren requires the full three months' treatment to show results. By that time you should begin to notice a light fuzz where only bald spots appeared. From that time on you may gradually expect to see this fuzz-like matter grow and develop into strong, healthy hair—but we reiterate, you must work with Ambergren and Ambergren will work with you * * * be patient and faithful and we are confident you will not be disappointed.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity, and does not intend to resume such advertising in the future; and that the sale of such commodity is limited to the filling of unsolicited orders. Respondent stipulated and agrees that in the event it de-

cides 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 Alwin Products, 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. (Nov. 23, 1934.)

0795. **Publisher—Cold Treatment.**—Kansas City Star Co., Kansas City, Mo., the publisher of the Star, a newspaper of wide interstate circulation printed, published and circulated advertisements alleged to contain false and misleading statements, claims and representations for the manufacturer and vendor of a cold treatment.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; disclaims any interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be joined as a party respondent in proceedings instituted against the advertiser before the Commission, and agrees to observe and abide by any cease and desist order based on such charges which may be issued; and also agrees to observe and abide by the terms and provisions of any stipulation or other agreement between the advertiser and the Commission of which it has notice. (Nov. 26, 1934.)

0796. **Vendor-Advertiser—Feminine Hygiene Preparations.**—Dupree Medical Co., New York, N. Y., vendor-advertiser, is engaged in selling various feminine hygiene preparations, and in advertising represented:

* * * Dupree's French Specific Pills of Penroyal * * *

It is no longer necessary for women to suffer from so many physical ailments and handicaps peculiar to their sex. Women today can be free from most feminine ills and discomforts. They can relieve their mind from all worry and unhappiness and enjoy life to the fullest extent.

Vagi-Cones are * * * recommended by physicians as germ destroyers
* * * Vagi-Cones are extensively used as a germ destroyer * * *

Dupree-Tabs * * * They destroy germs, * * *

Should woman take chances and suffer because of her sex?

* * * Relieve your mind from all worry and unhappiness. Enjoy your married life to its fullest extent. * * * Reckless living will be a thing of the past if you follow our simple directions and use our famous Dupree Vagi-Cones and Dupree Tabs. * * *

Enjoy your life—safely—without fear. * * * Dupree offers you the protection you have long sought so that you may enjoy life safely and without fear. * * * guaranteed to be safe and harmless * * *.

* * * Now there is a safe road. Do not take chances. Use Dupree's French Specific Pills of Pennroyal, Tansy and Cottonroot.

* * * to relieve your mind of worry and uncertainty * * *

Dupree Pills, * * * have been for years manufactured by us. * * *

* * * The woman who relies on Vagi-Cones and Dupree Tabs to keep her free from * * * worry will not be disappointed * * *.

* * * We feel that all of these three items are absolutely indispensable to your happiness and peace of mind * * *.

* * * Dupree Vagi-Cones, Dupree Tabs and Dupree Jelly are also offered and explained to you for your health, safety, and happiness. * * *

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) Directly or by reasonable implication that any of said products is an abortifacient or a contraceptive.

(b) That any of said products is a specific.

(c) That any of said products is French or of French origin.

(d) That any of said products are manufactured by respondent.

(e) That respondent's Vagi-Cones or Dupree Tabs have germ power or are capable of antiseptic or germicidal use, unless such statement or representation is limited to conditions in which use of such a product would be indicated and proper contact would be possible.

(f) That any of said products are safe or harmless, unless such representation is qualifying to indicate that they are safe and harmless only when used according to directions.

(g) That women who rely upon Vagi-Cones or Dupree Tabs will not be disappointed.

(h) That the use of any of said products will

1. Relieve a woman's mind from worry, unhappiness, or uncertainty.

2. Enable a woman to enjoy married life.

3. Enable a woman to enjoy life safely or without fear.

4. Provide a safe road.

5. Make reckless living a thing of the past.
6. Offer the protection that has long been sought.
7. Enable a woman to avoid taking chances.

(i) That any of said products are offered for health, safety, or happiness.

and from making any other claims or assertions of like import.

It is also stipulated and agreed that if the said Abraham Parodney 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. 28, 1934.)

APPENDIX

FEDERAL TRADE COMMISSION ACT
CLAYTON ACT
EXPORT TRADE ACT
SHERMAN ANTITRUST ACT
NATIONAL RECOVERY ACT
EXECUTIVE ORDER OF JANUARY 20, 1934¹
RULES OF PRACTICE

¹ Relating to N. R. A. cases before the Commission.

FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H.R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION. (38 Stat. 717; 15 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

¹Reported decisions of the courts arising under this act, have been published, as handed down from time to time, in the different volumes of the Commission's Decisions. There were no such decisions during the period covered by this volume (April 24, 1934, to December 2, 1934). 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. 712 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. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington, from the House Committee on Interstate and Foreign Commerce, on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report, presenting the minority views, respectively, of Messrs. Stevens and Lafferty; report of Senator Newlands, from the Committee on Interstate Commerce, on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressman 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, 13209-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); 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.

* For text of Sherman Act, see p. 743.

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. 697.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 739) 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.

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.

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

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

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive. 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 exclusive. 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.

⁴ For text of Sherman Act, see p. 743. As enumerated in last paragraph of sec. 4 of this act, see p. 701.

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 anti-trust 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. 13, 1921, ch. 64, 42 Stat. 159 (7 U.S.C.A. 222).

To transmit findings and recommendations to Attorney General.

It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, on direction of President or either House, alleged violations of antitrust acts.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith [722] recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To make reports to Congress, together with recommendations for new legislation.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY. (38 Stat. 722; 15 U.S.C.A., sec. 47.)

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe,

To ascertain and report an appropriate form of decree. Commission to proceed on notice to parties and as prescribed by court.

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, examinations, 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.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

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."}

¹ Reported 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—19, i.e., May 5, 1930, to Dec. 2, 1934, include the following: *Pittsburgh & W.Va. Ry. v. U.S.*, 231 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; *Oarbice Corporation of America v. American Patents Development Corporation et al.*, 283 U.S. 27; *Guterman 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); *Fleetway 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*, 89 F. (2d) 406; *Arrow-Hart & Hegeman Elec. Co. v. F.T.C.*, 291 U. S. 587, (see volume 18 at p. 691); *Pa. R. Co. v. I.C.C.*, Mar. 19, 1934, 291 U. S. 651, 54 S. Ct. 559; *Boss Mfg. Co. v. Payne Glove Co.*, 71 F. (2d) 768; *Lipson v. Socony-Vacuum Corp.*, 7 F. Supp. 961, 964; *Fleetway, Inc. v. Public Service Interstate Transportation Co.*, 72 F. (2d) 761; *Vulcan Mfg. Co. v. Maytag Co.*, 73 F. (2d) 136; *Ewoelstor Motor Mfg. & Supply Co. et al. v. Sound Equipment, Inc.*, 73 F. (2d) 725.

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, 1928, 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. 180-1), 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.}

² The Sherman Act (26 Stat 209; 15 U.S.C.A. 1 et seq.), which as a matter of convenience is printed herewith on p. 743 et seq.

³ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 712.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

Vendor may select own customers if not in restraint of trade.

Unlawful where effect may be to substantially lessen competition.

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: *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.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES, OR CONTRACTS.* (38 Stat. 731; 15 U.S.C.A., sec. 14.)

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.

* 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. 712.

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 laws⁵ may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

May sue in any United States district court, and recover threefold damages, including cost of suit.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS. (38 Stat. 731; 15 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.

⁵ For text of Sherman Act, see p. 743. As enumerated in Clayton Act, see first paragraph thereof on pp. 711-713.

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 with out capital stock, not affected by anti-trust 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.⁶ (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.

Of two or more 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.

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.

⁶ 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. 712.

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. 738, *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.

Purchase solely for investment excepted.

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.

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.¹ (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.

Not to serve more than one bank, banking association or trust company located in city or

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.

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

¹ 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. 712.

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: *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.

* 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.⁹

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.

⁹ The part of the section immediately preceding beginning with, "And provided further, That nothing in this Act" to this point, amendments made by act, May 15, 1916, ch. 120, act of May 26, 1920, ch. 206, and act Mar. 9, 1928, ch. 185.

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 83 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. 450 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. 712.

all other character of commerce, to be exercised as follows:¹³

¹³ The 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 hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

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.

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

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.

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. 743. As enumerated in Clayton Act, see first paragraph thereof on pp. 711-713.

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 28 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. 733; 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. 733; 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.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT. (38 Stat. 738; 23 U.S.C.A., sec. 386.)

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES. (38 Stat. 738; 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 return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial 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.

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

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, 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. "Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United "Trade within the United States."

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. 743.

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. 716.

⁴ See *ante*, p. 701.

make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the 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 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.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 8, and fine.

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.

May recommend readjustment in case of violation.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct

its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Approved, April 10, 1918.



SHERMAN ANTITRUST ACT

Sec. 1. CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL—PENALTY. (26 Stat. 209; 15 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 ^{Procedure.} the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

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 <sup>Threefold dam-
ages and costs.</sup> the costs of suit, including a reasonable attorney's fee.

Sec. 8. "PERSON" OR "PERSONS" DEFINED. (26 Stat. 210; 15 U.S.C.A., sec. 7.)

SEC. 8. That the word "person", or "persons", wher- <sup>Corporations and
associations under
laws of United
States, etc.</sup> ever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

¹ See footnote on p. 744.

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 volume. 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.

May establish industrial planning and research agency.

Duration of title.

(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.

[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.

If no unfair restrictions.

And truly representative.

And not oppressive, etc.

And do not permit monopolies, etc.

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

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.

"Person" defined.

"Interstate and foreign commerce."

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.

(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.)^{*}

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 of 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.

^{*} 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.

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 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 By registered mail. 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 Return. 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.

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 Form of application. to such extent and upon such terms as it shall deem just. 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 Examination ordinarily oral. good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

(b) Subpenas requiring the attendance of witnesses Subpenas for witnesses. from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

(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 pro-
ceed as fast as
practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to
counsel.

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 commis-
sioner, 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 reason-

able 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 the issues involved warrants it, he may of his own motion or at the request of counsel, at the close of the taking of

Examiner under certain circumstances to receive from each side statement of its contentions after evidence and before his report.

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.

(f) These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

(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

Not to be exchanged or argued.

Time allowed for such statements.

Commission may order.

Before person designated, etc.

Application for depositions.

(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.

(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 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 report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with. ^{Within time specified and in writing.}

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 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. ^{Within 90 days and for good cause.}

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 these rules. ^{In discretion of Commission, on good cause, etc.}

RULE XXI

ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D.C., unless otherwise specifically directed. ^{Washington, D.C.}

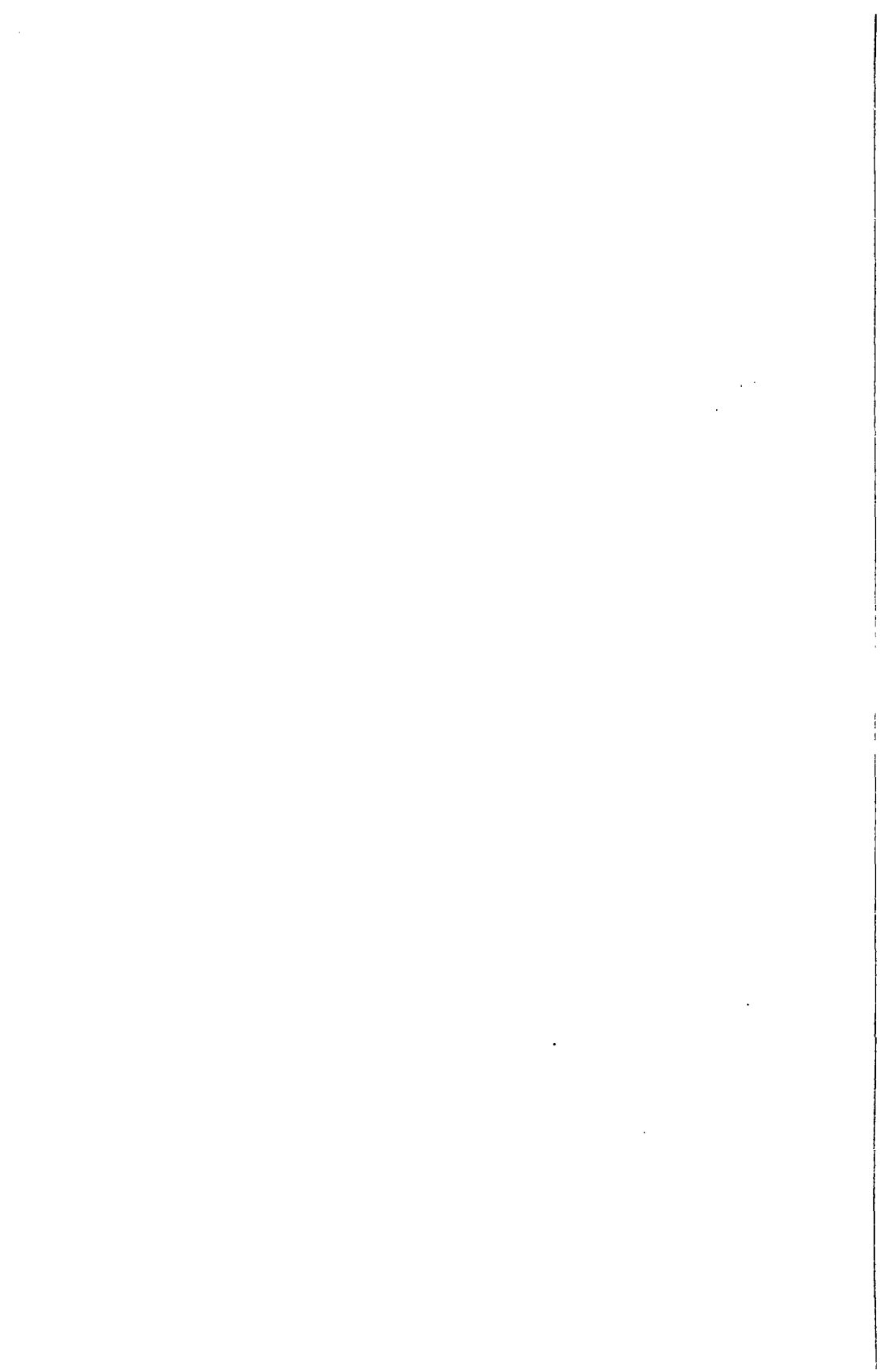


TABLE OF COMMODITIES ¹

DESIST ORDERS

| | Page |
|----------------------------------------------------------|----------------------------|
| Advertising matter..... | 369 |
| Alfalfa food products..... | 53 |
| "Almond extract"..... | 330 |
| Alvita tablets, tea and extract..... | 53 |
| "Amber-Ita" diabetes treatment..... | 57 |
| Aspirin..... | 229 |
| Asbestine..... | 7 |
| Atlases..... | 473 |
| Baking powder..... | 348 |
| Barium sulphate..... | 7 |
| Battery rejuvenator, electric..... | 85 |
| Bedding..... | 192 |
| Bladder-trouble treatments..... | 262 |
| Blood tonic..... | 107 |
| Books..... | 242, 473 |
| Boxes, fiber board, shipping..... | 428 |
| Calcium carbonate..... | 7 |
| Cancer medicines..... | 203 |
| Candies..... | 1, 292, 303, 394, 442, 459 |
| "Cedarized receptacles"..... | 315 |
| Chests, cardboard..... | 315 |
| "Chic Herb Tea"..... | 79 |
| "Choc-O-Toddy"..... | 330 |
| Cigars..... | 18 |
| Civil-service correspondence courses of instruction..... | 168 |
| Closets, cardboard..... | 315 |
| Correspondence courses of instruction in— | |
| Civil service..... | 166 |
| Factory management..... | 145 |
| Salesmanship..... | 145 |
| Cream: | |
| Massage..... | 183 |
| Old Egyptian Turtle Oil (face)..... | 286 |
| Crushed shell..... | 375 |
| "Carrier's tablets"..... | 119 |
| Cutlery..... | 74 |
| Dandruff treatment..... | 280 |
| Dental plates..... | 405 |
| Depilatory products..... | 35, 150 |
| Diabetes treatment..... | 57 |
| Digestive remedy..... | 119 |
| "Dr. Moffett's teethina powder"..... | 140 |
| "Dr. Tripp's tonic prescription"..... | 178 |

¹ Covering cease and desist orders therein embraced.

DESIST ORDERS

| | Page |
|--------------------------------------------------------|---------------------------------------------------------------|
| Extract, Alvita..... | 53 |
| Extracts, flavoring..... | 50, 330 |
| Face cream..... | 286 |
| Factory management courses of instruction..... | 145 |
| "Factory throw-outs" or "left overs"..... | 18 |
| False teeth..... | 405 |
| Fat reducer..... | 183 |
| Feminine ailments, preparations for..... | 107, 262 |
| Fiber board shipping boxes..... | 428 |
| Flatware..... | 74 |
| Flavoring extracts or compounds..... | 50, 330 |
| Flour..... | 187, 225 |
| Foodstuffs..... | 330 |
| Furniture..... | 31 |
| Goutre treatment..... | 381 |
| "Grayban" hair-coloring product..... | 252 |
| Hair dye or hair-coloring product..... | 252 |
| Hair remover..... | 35, 150 |
| Hair treatments..... | 280 |
| Handkerchiefs..... | 213 |
| High blood pressure treatment..... | 45 |
| Hosiery, ladies'..... | 467 |
| Household goods..... | 330 |
| Infant medicine..... | 140 |
| "Ironized Yeast"..... | 128 |
| Journals..... | 473 |
| Kidney-trouble treatments..... | 202 |
| Kraft corrugated, permeable cardboard receptacles..... | 315 |
| "Landis special prescription"..... | 45 |
| "Lemon extract"..... | 330 |
| "Lightning Electrolyte"..... | 85 |
| Linen handkerchiefs..... | 213 |
| Linseed oil..... | 7 |
| "Lost manhood" preparation or treatment..... | 107 |
| Lumbago treatment..... | 24 |
| Magazines..... | 473 |
| Management, factory, courses of instruction..... | 145 |
| "Maple extract"..... | 330 |
| Massage cream..... | 183 |
| Mattresses..... | 192 |
| Mattress springs..... | 197 |
| Measuring tapes, metal..... | 478 |
| Medicinal and proprietary preparations..... | 24, 45, 53, 57, 79, 107, 119, 140, 178, 203, 262, 381, 436 |
| Metals, nonferrous byproducts and mixed..... | 94 |
| Monuments..... | 356 |
| "Mystery Book"..... | 369 |
| Nervous diseases, preparations for..... | 262 |
| Neuralgia treatment..... | 24 |
| Neuritis treatment..... | 24 |
| Novelties..... | 330 |
| "Nurito" medicinal preparation..... | 24 |

DESIST ORDERS

| | Page |
|---------------------------------------------------|--------------------|
| Obesity treatment..... | 183 |
| "Old Egyptian Turtle Oil Cream"..... | 286 |
| "Orange extract"..... | 330 |
| "Oyster shell", crushed..... | 375 |
| Paints and paint products..... | 7 |
| "Palvo Vegetable Compound"..... | 107 |
| Paper..... | 237 |
| Perfumes..... | 160 |
| "Philodermin Salbe" hair and scalp treatment..... | 280 |
| "Prescription courses"..... | 262 |
| Publications..... | 473 |
| Radio sets..... | 303 |
| Receptacles, cardboard..... | 315 |
| Refrigerator advertising matter..... | 369 |
| Rheumatism treatments..... | 24, 262 |
| Roof coating..... | 7 |
| Salesmanship courses of instruction..... | 145 |
| Scalp treatment..... | 280 |
| Sciatica treatment..... | 24 |
| Scissors, cuticle..... | 478 |
| Scrofula remedy..... | 203 |
| Shell, crushed..... | 375 |
| Shipping boxes, fiber board..... | 428 |
| Shoes..... | 248, 257, 260, 261 |
| Siliceous matter..... | 7 |
| Silver-plated ware..... | 74 |
| "Sinaspotec" medicinal preparation..... | 436 |
| Sinus treatment..... | 436 |
| Sodium perborate..... | 35 |
| "Source Books"..... | 242 |
| "Spicer's Compound"..... | 107 |
| Springs, mattress..... | 197 |
| Stationery..... | 237 |
| Stomach trouble treatment..... | 119 |
| Strontium sulphide..... | 35 |
| Tapes, metal measuring..... | 478 |
| Tea: | |
| Alvita..... | 53 |
| Chic Herb..... | 79 |
| Teaspoons..... | 74 |
| Teeth, artificial..... | 405 |
| "Teethina Powder"..... | 140 |
| Titanox..... | 7 |
| Tobacco..... | 18 |
| Toilet articles, preparations or waters..... | 160, 286, 330 |
| Tonics..... | 107, 178 |
| "Turtle Oil Cream"..... | 286 |
| "Vanilla extract"..... | 330 |
| Velvet fabrics..... | 217 |
| Veneral diseases, treatments for..... | 262 |
| Walnut..... | 31 |
| White lead..... | 7 |

STIPULATIONS

| | Page |
|--------------------------------------------|------|
| Writing paper..... | 237 |
| Yeast, ironized..... | 128 |
| Zinc oxide..... | 7 |
| Zinc peroxide..... | 35 |
| "Zip Epilator" and "Depilatory Cream"..... | 150 |

STIPULATIONS¹

| | |
|-----------------------------------------------|---------------------------------------|
| Account books..... | <i>642</i> (0745) |
| Account collecting systems of forms..... | <i>567</i> (0666) |
| Accounting correspondence course..... | 550 (1259) |
| Acidity treatment..... | <i>605</i> |
| Acne, treatment for..... | <i>615, 663</i> |
| Adhesive compound..... | <i>629</i> (0731) |
| Advertising matter..... | 547 (1252) |
| Advertising plan..... | <i>651</i> (0756), <i>678</i> |
| Air conditioner for refrigerators..... | <i>577</i> |
| Almond extract..... | 529 |
| "Ambergren" hair preparation..... | <i>689</i> |
| "Amisilk"..... | 512 (1196) |
| Anemia, treatment for..... | <i>663</i> |
| Announcements, commercial and social..... | 536 |
| Arthritis treatment or remedy..... | 526 (1217), <i>592, 602, 605, 663</i> |
| Aspirin mixture, liquid..... | <i>630</i> (0733) |
| Asthma, treatment for..... | <i>663</i> |
| Athlete's foot treatment..... | <i>615</i> |
| "Auto Eyes" windshield shade..... | <i>564</i> |
| Automobile polishes..... | 549 (1257) |
| Backache treatment..... | <i>605, 682</i> |
| Bad complexion treatment..... | <i>605</i> |
| Baldness treatment..... | <i>689</i> |
| Banana extract..... | 529 |
| Barber shop and beauty parlor equipment..... | 540 (1240) |
| Barometers..... | 500 |
| Beauty preparations..... | <i>610</i> (0711), <i>613</i> |
| Beer signs..... | <i>584</i> (0688) |
| Black walnut extract..... | 529 |
| Bladder trouble treatment..... | <i>605, 682</i> |
| Blood poison, treatment for..... | <i>671</i> |
| Boils, treatment for..... | <i>615, 671</i> |
| "BonKora" obesity treatment..... | <i>643</i> |
| Booklet on invention protection..... | 532 (1226) |
| Brassieres..... | <i>590</i> |
| Bread, health..... | 552 (1261) |
| "Broadcloth"..... | 533 (1227) |
| Bronchitis, treatment for..... | <i>663</i> |
| "Brownatone" hair dye..... | <i>681</i> |
| "Buckley's Mixture" for colds and coughs..... | <i>670</i> |
| Bulbs, electric light..... | 503 (1181) |
| Business cards, perfumed..... | <i>562</i> (0655), <i>587</i> (0692) |
| "Byro-da Tonic Pills"..... | <i>674</i> |

¹ Page references to stipulations of the special board are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number, e. g., "01", "02", etc.

STIPULATIONS

| | Page |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Cancer, treatment for..... | 671 |
| Candies..... | 526 (1216), 528 (1220), 546 (1251), 678 |
| Candy deal, penny..... | 580 (0682) |
| Carbuncles, treatment for..... | 671 |
| Cards, display sales..... | 619 (0722) |
| Cards, personal..... | 566 |
| Cards, perfumed business..... | 562 (0655), 587 (0692) |
| Cards, premium display sales..... | 641 |
| Catarrh treatment..... | 626 |
| Cement, liquid..... | 608 |
| "Cen-Pe-Co" motor oils..... | 584 (0690) |
| Chamois..... | 498 (1173), 537 (1234), 551 |
| Cheese chips..... | 656 (0768) |
| Chemicals..... | 498 (1173) |
| Chewing gum..... | 567 (0667) |
| Chocolate..... | 528 (1220) |
| Christmas cards..... | 581 (0685), 586, 589, 635 |
| Cigars..... | 499, 541 (1241) |
| Citrus fruits..... | 505 (1184) |
| Clock parts..... | 546 (1250) |
| Clothing, men's..... | 523 (1212) |
| Coin-operating vending machines..... | 511 |
| Cold treatments, remedies or preparations..... | 584, (0689), 605, 611 (0712), 626, 629 (0732), 630 (0734), 631 (0737, 0738), 649, 650, 652-654, 663, 670, 679 (0784), 692 (0795). |
| Collars..... | 512 (1195) |
| Commerical announcements..... | 536 |
| Confectionery..... | 511, 526 (1216), 528 (1220), 546 (1251) |
| Constipation, treatment for..... | 682 |
| Conversion oil burners..... | 544 (1247) |
| "Copperlytic Mirrors"..... | 535 (1232) |
| Correspondence courses..... | 533 (1228) |
| Accounting..... | 550 (1259) |
| Law..... | 530 (1222) |
| Secretarial..... | 524, 550 (1259) |
| Cosmetic crême..... | 668 (0776) |
| Cough syrup..... | 628 (0730), 651 (0754, 0755), 670 |
| Counter display goods..... | 621 |
| Coupons, redemption..... | 547 (1252) |
| Cream, skin..... | 570 (0669) |
| Cream whipper..... | 583 |
| Creomulsion cold treatment..... | 584 (0689) |
| Dandruff treatment..... | 615, 689 |
| Dental plates..... | 527 |
| Dental supplies..... | 519 (1207) |
| Deodorant..... | 625 |
| Diabetes treatment..... | 605 |
| Display sales cards..... | 619 (0722) |
| "Dosis" poultry remedy..... | 531 |
| Doughnut machines..... | 598 (0704) |
| Drugs..... | 501, 686 |
| Eczema treatment..... | 615, 663, 671 |

STIPULATIONS

| | Page |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Egg whipper..... | 583 |
| Electric light bulbs..... | 503 (1181) |
| "Embossing"..... | 536 |
| Embroidery and materials..... | 562 (0657), 596 |
| "Engraving"..... | 536 |
| Epilepsy, treatment for..... | 639, 668 (0775) |
| Eruptions, treatment for..... | 615 |
| Extracts, flavoring..... | 529 |
| Eyelash and eyebrow treatment..... | 555, 622 (0725) |
| Facial blemishes, treatment for..... | 615 |
| "Father John's Medicine"..... | 610 (0709, 0710), 614 |
| Felt..... | 498 (1173) |
| Feminine hygiene or ailments, preparations for..... | 501, 559 (0652), 562 (0659), 574 (0673), 575 (0674), 578, 591, 598, (0702, 0703), 632, 663, 671, 687, 692 (0796). |
| Fever sores, treatment for..... | 671 |
| Film, multi-chrome..... | 542 (1243) |
| Fingerprinting course..... | 630 (0735) |
| Fistulas, treatment for..... | 671 |
| Flavoring extracts..... | 529 |
| Flu treatment..... | 605 |
| Food mat..... | 582 |
| Food preparation..... | 656 (0769) |
| Forks..... | 678 |
| French perfumed business cards..... | 587 (0692) |
| Frostbite, treatment for..... | 671 |
| Furniture..... | 495 |
| Girdles..... | 590 |
| "Glanray" gland treatment..... | 682 |
| Glycerin tablets..... | 679 (0785) |
| Goiter, treatment for..... | 663 |
| "Gold"..... | 520 |
| Golf ball marking device..... | 554 |
| Gout treatment..... | 592, 602 |
| "Graf-Ex" for motor lubrication..... | 581 (0684) |
| Granite..... | 503 (1180) |
| "Gray Out" hair dye..... | 562 (0660), 628 (0729) |
| Greeting cards..... | 581 (0685), 586, 589, 685 |
| Groceries..... | 636 |
| Hair dyes, treatments or preparations..... | 562 (0660, 0661), 565, 573, 581 (0683), 607, 611 (0713), 628 (0729), 647, 681, 689 |
| Handkerchiefs..... | 512 (1195) |
| "Happy Chick Wormer and Tonic"..... | 669 |
| Hardwoods..... | 493 |
| Hat linings..... | 538 |
| Hats..... | 543 (1246), 544 (1248) |
| Headache, treatment for..... | 682 |
| Health bread..... | 552 (1261) |
| "Hecolite"..... | 527 |
| Hemorrhoids, treatment for..... | 615 |
| Herbal tonic..... | 574 (0672), 655 (0766) |
| "Hexin" pain relief preparation..... | 576 (0678) |

STIPULATIONS

| | Page |
|--------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| High blood pressure treatment or preparation..... | 605, 666 |
| Hives, treatment for..... | 615 |
| Horoscopes..... | 575 (0676), 580 (0681), 634 |
| Hosiery..... | 507 (1187), 513 (1198), 518, 530 (1223), 619 (0721) |
| Household specialties..... | 545 |
| Indigestion treatment..... | 605, 682 |
| Insomnia, treatment for..... | 682 |
| Invention protection..... | 532 (1226) |
| "Iokelp"..... | 562 (0656) |
| Jewelry..... | 553 |
| "Kamala~Nicotine Caps"..... | 618 |
| Kelp compound, dehydrated..... | 562 (0656) |
| "Kelvida" medicinal preparation..... | 663 |
| Kidney trouble treatment..... | 605 |
| Kitchen utensils..... | 594 |
| Knitted products..... | 516 (1201) |
| Knives..... | 678 |
| "Korum" poultry treatment..... | 622 (0726) |
| "Kurlene" eyelash treatment..... | 555 |
| Ladies' wear..... | 516 (1201) |
| Law correspondence course..... | 530 (1222) |
| Laxative cold remedy or preparation..... | 649 (0750), 650 (0753) |
| Leather findings..... | 549 (1257) |
| "Lemon" tooth paste..... | 537 (1235) |
| "Linen"..... | 512 (1195) |
| Liniment..... | 595 |
| Liver trouble treatment..... | 605, 671 |
| Lumbago treatment..... | 592, 602 |
| "Lymphol"..... | 494 |
| Mahogany..... | 493 |
| Maple extract..... | 529 |
| "Maybelline" eyelash and eyebrow treatment..... | 622 (0725) |
| Mechanical work..... | 519 (1207) |
| Medical appliances..... | 501 |
| Medicated ointment..... | 671 |
| Medicinal preparations (<i>see also</i> specific treatments)..... | 557, 560, 574 (0672), 576, 584 (0689), 610 (0709, 0710), 611 (0714), 614, 663, 674 |
| Men's shirts..... | 533 (1227) |
| Mental depression, treatment for..... | 663, 682 |
| "Metallic-X" liquid cement..... | 608 |
| Military uniforms, insignia and accessories..... | 525, 528 (1219) |
| Mirror cleaner..... | 563 |
| Mirrors..... | 535 (1232) |
| Mole treatment..... | 665 |
| "Molex" mole treatment..... | 665 |
| Moth preventative..... | 625 |
| Motor lubrication composition..... | 581 (0684) |
| "Multi-Chrome Film"..... | 542 (1243) |
| "Murdirat" vermin exterminator..... | 517 (1203) |
| Mushroom spawn..... | 575 (0675) |
| "Nature's Crystals" medicinal salt..... | 605 |

STIPULATIONS

| | Page |
|----------------------------------------------------|------------------------------------------------------------------|
| Neatsfoot oil..... | 549 (1257) |
| Needles..... | 562 (0657) |
| Nervous disorders, treatments for..... | 605, 663, 682 |
| Neuralgia pains, treatment for..... | 671 |
| Neuritis treatment..... | 592, 595, 602, 663, 682 |
| "No Frost" window cleaner..... | 563 |
| "Norma" medicinal preparation..... | 666 |
| Novelties..... | 545 |
| Obesity treatment..... | 643, 663 |
| Oil burners..... | 544 (1247) |
| Oil refiners, portable..... | 552 (1262) |
| Oils, motor lubricating..... | 498 (1174), 584 (0690) |
| Ointments..... | 615, 655 (0767), 667, 671 |
| Old age, treatment for..... | 682 |
| Old wounds, treatment for..... | 671 |
| Oleomargarine..... | 548 (1255) |
| Olive oil..... | 534 (1229) |
| Orange extract..... | 529 |
| "Ovaltine" food preparation..... | 656 (0769) |
| Pain relief preparation or ointment..... | 578 (0678), 655 (0767), 667 |
| Paints..... | 502 (1179) |
| Pamphlet on invention protection..... | 532 (1226) |
| Panama hats..... | 543 (1246), 544 (1248) |
| "Pariogen Tablets", feminine hygiene..... | 591 |
| Paste..... | 502 (1179) |
| Patterns, stamped..... | 562 (0657) |
| Peach extract..... | 529 |
| "Pearl"..... | 547 (1252) |
| Pen and pencil sets..... | 547 (1252) |
| Pep or vigor tablets or pills..... | 562 (0658), 572, 578, 674 |
| "Peruna" medicinal preparation..... | 560 |
| Petroleum products..... | 498 (1174) |
| Piles, treatment for..... | 615, 671, 682 |
| Pimples, treatment for..... | 615 |
| "Platinel", "Platinized platinum", "Platinum"..... | 519 (1207) |
| Poisonous bites, treatment for..... | 671 |
| Polishes, shoe and automobile..... | 549 (1257) |
| Poultry worm medicines treatments or remedies..... | 531, 550 (1258), 559 (0653), 587 (0693), 618, 622 (0726), 669 |
| Premiums..... | 678 |
| "Pro-Co-Pax" counter display goods..... | 621 |
| Proprietary medicine..... | 557 |
| Prostate gland treatment or device..... | 570 (0668), 682 |
| Pumice..... | 498 (1173) |
| "Puro" deodorant and moth preventative..... | 625 |
| "PurOdor" air conditioner for refrigerators..... | 577 |
| Radioactive remedies..... | 526 (1217) |
| Radios..... | 515, 522, 620 |
| Radio sales plans..... | 642 (0743), 680 (0787) |
| Raincoats..... | 539 (1237) |
| Rayon..... | 518 (1206), 530 (1223) |
| Reducing garments..... | 590 |

STIPULATIONS

| | Page |
|-----------------------------------------|-------------------------------------------------------------------------------------------------------|
| Reducing salts..... | 668 (0777) |
| Resinol ointment..... | 615 |
| Retail dealer advertising plan..... | 651 (0756) |
| Rheumatism remedies, or treatments..... | 526 (1217), 592, 595, 602, 605, 663, 671, 679 (0786), 680 (0788), 682 |
| Rickets, treatment for..... | 663 |
| "Rit" hair color restorer..... | 573 |
| Rupture treatment..... | 494 |
| Sales cards, premium display..... | 641 |
| Salts, reducing or medicinal..... | 605, 668 (0777) |
| Salt rheum, treatment for..... | 615 |
| "Sanfordized" products..... | 533 (1227) |
| "Savasole" shoe repairing product..... | 588 |
| Scalp tonic or treatment..... | 581 (0683), 615 |
| Scarfs..... | 562 (0657) |
| Sciatica Remedies or treatments..... | 526 (1217), 592, 595, 682 |
| Sea plant preparation..... | 645 |
| "Sea-Tone" preparation..... | 645 |
| Secretarial correspondence courses..... | 524, 550 (1259) |
| Sex stimulants or tablets..... | 562 (0658), 572, 578, 674 |
| Sexual impotence, treatment for..... | 682 |
| "Shamy"..... | 534 (1230) |
| Shingles..... | 532 (1225), 535 (1231), 547 (1253), 548 (1254) |
| Shingles, treatment for..... | 615 |
| Shirts..... | 512 (1195), 533 (1227), 542 (1244) |
| Shoe polishes..... | 549 (1257) |
| Shoe repairing product..... | 588 |
| Shoes..... | 504, 505 (1183) 506, 508-510, 513 (1197), 514, 516 (1202), 517 (1204), 519 (1208), 521, 539 (1238) |
| Signs, beer..... | 584 (0688) |
| "Silk"..... | 507 (1187), 512 (1196), 513 (1198), 518, 530 (1223) |
| Silver..... | 553 |
| Silver plated ware..... | 545 |
| Skin treatments or creams..... | 570 (0669), 615, 663, 671 |
| Soaps..... | 534 (1229) |
| Social announcements..... | 536 |
| Sores, treatment for..... | 671 |
| Sponges..... | 498 (1173), 537 (1234), 551 |
| Sport garments..... | 539 (1237) |
| Stationery..... | 566 |
| "Sterling silver"..... | 553 |
| "Stero-Tex" fabric compound..... | 538 |
| Stockings, rubber..... | 590 |
| Stomach remedies or treatments..... | 576 (0677), 605, 649 (0749), 663 |
| Stoves..... | 544 (1247) |
| Strawberry extract..... | 529 |
| Suits, men's..... | 523 (1212) |
| Sweaters..... | 502 (1178), 549 (1256) |
| "Swedish Knackerbrod" health bread..... | 552 (1261) |
| "Tacit Chew" chewing gum..... | 567 (0667) |
| Talcum powders..... | 540 (1239) |
| Tetter, treatment for..... | 615 |

STIPULATIONS

| | Page |
|-------------------------------------------------------------------------------|------------------------------------|
| Texts..... | 634 |
| Thermometers..... | 500 |
| Ties..... | 512 (1195) |
| Toilet articles or preparations..... | 610 (0711), 613, 657 (0770), 686 |
| Tonic: | |
| Herbal..... | 655 (0766) |
| Pills..... | 674 |
| Tonsil treatment..... | 611 (0714) |
| Tooth paste..... | 537 (1235) |
| “Treatine” medicinal preparation..... | 611 (0714) |
| Trouser presser, electric..... | 631 (0736) |
| Truss or mechanical device..... | 494 |
| Tubercular sores, treatment for..... | 671 |
| Tumors, treatment for..... | 671 |
| Ulcers, treatment for..... | 671 |
| Umbrellas..... | 512 (1196) |
| Underwear..... | 512 (1195) |
| Uniforms, military..... | 525, 528 (1219) |
| Vanilla extract..... | 529 |
| Varicose veins or ulcers, treatment for..... | 671 |
| Vending machines..... | 511 |
| Vermin exterminator..... | 517 (1203), 543 (1245) |
| “Ver-mi-trol” poultry worm medicine..... | 587 (0693) |
| Vigor tablets..... | 572 |
| Wall paper..... | 502 (1179) |
| “Walnut”..... | 507 (1186) |
| Walnut extract..... | 529 |
| Wart treatment..... | 665 |
| Watches..... | 541 (1242) |
| Watch parts..... | 546 (1250) |
| “Whirl Whip” egg and cream whipper..... | 583 |
| Window: | |
| Cleaner..... | 563 |
| Sign letters..... | 520 |
| Windshield shade..... | 564, 642 (0744) |
| “Wizaroyal” liniment..... | 595 |
| Women, treatments, etc., for. <i>See</i> Feminine, etc. | |
| Wood veneers..... | 507 (1186) |
| Wool..... | 502 (1178), 523 (1213), 549 (1256) |
| “Worm-A-Tonic” poultry remedy..... | 559 (0653) |
| Worm medicine or treatment, poultry... 559 (0653) 587 (0693), 618, 622 (0726) | |
| “WormR Tablets”..... | 622 (0726) |
| Yarns..... | 502 (1178), 549 (1256), 562 (0657) |

INDEX ¹

DESIST ORDERS

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>"A-1", using misleadingly. <i>See</i> Advertising falsely, etc.; Misbranding or mislabeling.</p> <p>Acquiring stock in competitor.....</p> <p>Advantages, business, misrepresenting. <i>See</i> Misrepresenting business status, etc., and, <i>in general</i> Unfair methods of competition.</p> <p>Advertising falsely or misleadingly:</p> <p style="padding-left: 20px;">As to—</p> <p style="padding-left: 40px;">Business status, advantages or connections—</p> <p style="padding-left: 60px;">Business as conducted by doctor.....</p> <p style="padding-left: 60px;">Dealer being—</p> <p style="padding-left: 80px;">Manufacturer.....</p> <p style="padding-left: 80px;">Miller.....</p> <p style="padding-left: 80px;">Originator of product.....</p> <p style="padding-left: 80px;">Sole distributor of product.....</p> <p style="padding-left: 60px;">Funds to cover returned goods.....</p> <p style="padding-left: 60px;">Government connection.....</p> <p style="padding-left: 60px;">Personnel.....</p> <p style="padding-left: 60px;">Plant.....</p> <p style="padding-left: 60px;">Private business being university.....</p> <p style="padding-left: 60px;">Quantity purchases and savings.....</p> <p style="padding-left: 60px;">Size.....</p> <p style="padding-left: 60px;">Unincorporated business as corporation.....</p> <p style="padding-left: 40px;">Competitive products.....</p> <p style="padding-left: 40px;">Composition.....</p> <p style="padding-left: 40px;">Domestic product being imported.....</p> <p style="padding-left: 40px;">Earnings (agents').....</p> <p style="padding-left: 40px;">Employees, as competitor's.....</p> <p style="padding-left: 40px;">Free product.....</p> <p style="padding-left: 40px;">Government connection.....</p> <p style="padding-left: 40px;">Guarantees.....</p> <p style="padding-left: 40px;">History of product.....</p> <p style="padding-left: 40px;">Indorsements.....</p> <p style="padding-left: 40px;">Nature of—</p> <p style="padding-left: 60px;">Manufacture of product.....</p> <p style="padding-left: 60px;">Product.....</p> <p style="padding-left: 40px;">Opportunities in product or service.....</p> <p style="padding-left: 40px;">Prices.....</p> <p style="padding-left: 40px;">Products, as competitor's.....</p> <p style="padding-left: 40px;">Qualities, properties, or results of product, service, or treatment..</p> <p style="padding-left: 60px;">24, 35, 45, 53, 57, 79, 85, 107, 119, 128, 140, 145, 150, 178, 183, 203, 217, 229, 252, 257, 262, 280, 286, 315, 381, 405, 436.</p> <p style="padding-left: 40px;">Quality of product.....</p> <p style="padding-left: 60px;">Through use of symbol "A-I".....</p> <p style="padding-left: 40px;">Safety of product.....</p> | <p>Page</p> <p>94</p> <p>203</p> <p>7, 18, 187, 225, 330</p> <p>187, 225</p> <p>467</p> <p>467</p> <p>330</p> <p>166</p> <p>7, 330</p> <p>7</p> <p>145</p> <p>7, 330</p> <p>7</p> <p>405</p> <p>229, 369</p> <p>7, 330</p> <p>50</p> <p>330</p> <p>473</p> <p>467</p> <p>166</p> <p>166, 252, 330, 467</p> <p>7, 35, 85, 140, 178</p> <p>57, 140, 381, 405.</p> <p>7, 140, 257, 356, 405</p> <p>18, 31, 35, 145, 286, 330, 356, 375</p> <p>166</p> <p>286, 330, 356, 467</p> <p>473</p> <p>7</p> <p>7, 18, 74, 330</p> <p>74</p> <p>35, 229, 381</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

¹ Covering practices included in cease and desist orders in volume in question. For index by commodities involved rather than practices, *see* Table of Commodities.

DESIST ORDERS

Advertising falsely or misleadingly—Continued.

As to—Continued.

| | Page |
|---------------------------------------|---------------|
| Source or origin of product— | |
| Maker..... | 363 |
| Place..... | 237 |
| Special offers..... | 356 |
| Success accomplished or use made..... | 7 |
| Testimonials..... | 203 |
| Tests..... | 57 |
| Trade-mark rights..... | 229 |
| Unique nature..... | 467 |
| Value of product or offering..... | 145, 330, 467 |

Advertising, offering product falsely as free, on pretext of. *See* Offering deceptive, etc.

Agents' earnings, misrepresenting. *See* Advertising falsely, etc.

Assuming or using misleading trade or corporate name:

As to—

| | |
|----------------------------------------|----------|
| Dealer being— | |
| Manufacturer..... | 187, 225 |
| Miller..... | 225 |
| Government connection..... | 166 |
| Private business being university..... | 145 |

Business:

Connections, functions, and status, misrepresenting. *See* Misrepresenting business status, etc.

Unfair methods of, in general. *See* Unfair methods of competition.

Certificate of official classification committee of railroads, using box maker's certificate improperly, by dealer. *See* Misbranding or mislabeling; Misrepresenting business status, etc.

Chance, using gambling schemes based on. *See* Using lottery scheme, etc.

Claiming and/or using indorsements or testimonials falsely or misleadingly:

As to or from—

| | |
|-----------------------------------------|-----|
| Doctors or physicians..... | 140 |
| Facts beyond testifiers' knowledge..... | 381 |
| Professional, never given..... | 405 |
| Public officials..... | 242 |
| Qualities of product..... | 203 |

By—

| | |
|-------------------------------------------------------------|----|
| Using where circumstances misleading and not probative..... | 57 |
|-------------------------------------------------------------|----|

Claiming trade-mark rights wrongfully..... 229

Classification committee of railroads, using box maker's certificate improperly, by dealer. *See* Misbranding or mislabeling; Misrepresenting business status, etc.

Commodities, misrepresenting. *See, in general,* Unfair methods of competition.

Competition, unfair methods of. *See* Unfair methods of competition.

Composition of product, misrepresenting. *See, in general,* Unfair methods of competition.

Corporate name, using misleadingly. *See* Assuming or using, etc.

Corporation, claiming falsely to be. *See* Advertising falsely, etc.; Misrepresenting business status, etc.

Dealer representing self falsely as manufacturer. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.

DESIPT ORDERS

Describing or designating product misleadingly. *See, in general*, Unfair methods of competition.

Disparaging or misrepresenting competitors' and/or their products:

Products—

As to—

| | |
|-----------------------------------------|------|
| Genuineness..... | Page |
| Qualities of..... | 229 |
| Through misleading purported tests..... | 369 |
| | 346 |

Doctors:

Claiming indorsements of falsely. *See* Claiming, etc.

Representing business falsely as conducted by doctor. *See* Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting business status, etc.

Domestic product, representing falsely as imported. *See* Advertising falsely, etc.; Misbranding or mislabeling.

Earnings, misrepresenting. *See* Advertising falsely, etc.

Employees of competitor, misrepresenting as to. *See* Advertising falsely, etc.

False or misleading advertising. *See* Advertising falsely, etc.

Free, misrepresenting product as to being. *See* Advertising falsely, etc.; Offering deceptive, etc.

Goods or products, misrepresenting. *See, in general*, Unfair methods of competition.

Government connection, misrepresenting. *See* Advertising falsely, etc.

Guarantees, misrepresenting as to. *See* Advertising falsely, etc.; Offering deceptive, etc.

History of product, misrepresenting. *See* Advertising falsely, etc.

Imported product, representing domestic as, falsely. *See* Advertising falsely, etc.; Misbranding or mislabeling.

Indorsements, claiming or representing, falsely or misleadingly. *See* Claiming, etc.

Ingredients of products, misrepresenting. *See, in general*, Unfair methods of competition.

Labeling articles falsely or misleadingly. *See* Misbranding or mislabeling.

Maker of product, misrepresenting as to. *See* Advertising falsely, etc.

Manufacture of product, misrepresenting as to. *See* Advertising falsely, etc.

Manufacturer, falsely claiming to be, by dealer. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.

Miller, claiming to be falsely. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.

Misbranding or mislabeling:

As to—

| | |
|----------------------------------------------------------------------|--------------------|
| Business being conducted by doctor..... | 203 |
| Composition..... | 213 |
| Dealer being manufacturer..... | 18, 187, 428 |
| Through using box maker's official classification certificate.. | 428 |
| Domestic product being imported..... | 478 |
| Nature of— | |
| Manufacture of product..... | 203, 248, 257 |
| Product..... | 18, 286, 375 |
| Prices..... | 192, 197, 286 |
| Qualities, properties, or results of product, service or treatment.. | 203, |
| | 248, 257, 286, 315 |

DESIST ORDERS

Misbranding or mislabeling—Continued.

| As to—Continued. | Page |
|----------------------------------|---------------|
| Quality of product..... | 18 |
| Through use of symbol "A-1"..... | 74 |
| Source or origin or product— | |
| Maker..... | 363 |
| Place..... | 160, 237, 478 |

Misleading practices. *See, in general, Unfair methods of competition.*

Misrepresenting business status, advantages or connections:

| As to— | |
|--------------------------------------------------------------------|---------------------------|
| Business being conducted by doctor..... | 203 |
| Dealer being— | |
| Manufacturer..... | 7, 18, 187, 225, 330, 428 |
| Through using box maker's official classification certificate..... | 428 |
| Miller..... | 187, 225 |
| Originator of product..... | 467 |
| Sole distributor of product..... | 467 |
| Employees, as competitor's..... | 473 |
| Funds to cover returned goods..... | 330 |
| Government connection..... | 166 |
| Personnel..... | 7, 330 |
| Plant..... | 7 |
| Private business being university..... | 145 |
| Products, as competitor's..... | 473 |
| Quantity purchases and savings..... | 7, 330 |
| Size..... | 7 |
| Unincorporated business being corporation..... | 405 |

Misrepresenting prices:

| | |
|----------------------------------------------|-------------------------|
| Through representing— | |
| Fictitious, exaggerated prices as usual..... | 192, 197, 242, 286, 330 |
| Sales at cost, falsely..... | 330 |
| Usual as special reduced..... | 242, 356, 467 |

Misrepresenting product.

See also, in general, Unfair methods of competition.

| As to— | |
|------------------------------------------|---------------|
| Nature..... | 31 |
| Qualities, properties, or results..... | 217, 315, 346 |
| Through misleading purported tests..... | 346 |
| Source or origin of product (maker)..... | 363 |

Names, using unfairly. *See Assuming or using, etc., and in general, Unfair methods of competition.*Nature of product, manufacture thereof, or operations. *See, in general, Unfair methods of competition.*Offering deceptive inducements to purchase: *See also, in general, Unfair methods of competition.*

| | |
|--------------------------------------------------------|-----|
| Through— | |
| Representing or offering— | |
| Agents' earnings falsely or misleadingly..... | 330 |
| "Free" products falsely or misleadingly— | |
| On pretext— | |
| Not as represented..... | 467 |
| Prospect's opinion..... | 242 |
| Price of which included in charge otherwise demanded.. | 467 |

DESIST ORDERS

- Offering deceptive inducements to purchase—Continued.
 Through—Continued.
 Representing or offering—Continued. Page
 Guarantee, falsely or misleadingly ----- 166, 252, 467
 Regular prices, as special reduced, falsely or misleadingly—
 On pretext—
 Advertising ----- 356
 Introduction ----- 356
 Special selection or standing of prospect ----- 356
- Offers, special or limited, claiming falsely. *See* Advertising falsely, etc.;
 Misrepresenting prices; Offering deceptive, etc.
- Opportunities in product or service, misrepresenting. *See* Advertising
 falsely, etc.
- Origin or source of products, misrepresenting. *See* Advertising falsely,
 etc., and *in general*, Unfair methods of competition.
- Personnel, misrepresenting. *See* Advertising falsely, etc.; Misrepresent-
 ing business status, etc.
- Place or origin of product, misrepresenting. *See* Advertising falsely,
 etc.; Misbranding or mislabeling.
- Plant, misrepresenting. *See* Advertising falsely, etc.; Misrepresenting
 business status, etc.
- Practices, unfair, condemned in this volume. *See* Unfair methods of
 competition.
- Prices, misrepresenting. *See* Advertising falsely, etc.; Misrepresenting
 prices; Offering deceptive, etc.
- Products, misrepresenting. *See, in general*, Unfair methods of compe-
 tition.
- Professional persons, claiming indorsements or testimonials of, falsely
 or misleadingly. *See* Claiming, etc.
- Properties of product. *See, in general*, Unfair methods of competition.
- Qualities or quality of product. *See, in general*, Unfair methods of com-
 petition.
- Quantity purchase savings, claiming falsely. *See* Advertising falsely,
 etc.
- Refunds, advertising falsely or misleadingly as to. *See* Advertising
 falsely, etc.
- Results of product or service, misrepresenting. *See* Advertising falsely,
 etc.
- Return of goods, advertising falsely as to. *See* Advertising falsely, etc.
- Safety of product, misrepresenting. *See* Advertising falsely, etc.
- Size, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting
 business status, etc.
- Source of product, misrepresenting. *See* Advertising falsely, etc., and,
in general, Unfair methods of competition.
- Special offers, using false or misleading. *See* Advertising falsely, etc.;
 Misrepresenting prices; Offering deceptive, etc.
- Sponsors of product, misrepresenting. *See* Advertising falsely, etc.
- Staff or personnel, misrepresenting. *See* Advertising falsely, etc.; Mis-
 representing business status, etc.
- Stock, acquiring in competitor. *See* Acquiring, etc.
- Success of product, misrepresenting. *See* Advertising falsely, etc.
- Testimonials or indorsements, claiming or using falsely or misleadingly.
See Advertising falsely, etc.; Claiming, etc.

STIPULATIONS

Tests of product, misrepresenting. *See* Advertising falsely, etc.
 Trade marks or trade names, using unfair practices in respect of. *See, in general*, Unfair methods of competition.
 Unfair methods of competition condemned in this volume. *See—*

- Acquiring stock in competitor.
- Advertising falsely or misleadingly.
- Assuming or using misleading trade or corporate name.
- Claiming and/or using indorsements or testimonials falsely or misleadingly.
- Claiming trade-mark rights wrongfully.
- Disparaging or misrepresenting competitors and/or their products.
- Misbranding or mislabeling.
- Misrepresenting business status, advantages, or connections.
- Misrepresenting prices.
- Misrepresenting product.
- Offering deceptive inducements to purchase.
- Using lottery scheme in merchandising.
- Using misleading trade name or mark.

Unique nature of product, misrepresenting. *See* Advertising falsely, etc.
 University, claiming falsely to be. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc. Page
 Using lottery scheme in merchandising----- 1, 292, 303, 394, 442, 459
 Using misleading trade name or mark:
 As to—
 Source or origin of product (place)----- 237
 Values, misrepresenting. *See* Advertising falsely, etc., and, *in general*,
 Unfair methods of competition.

STIPULATIONS¹

Advertising falsely or misleadingly:
 As to—

- Agents—
 - Earnings or profits----- 511,
563, 564, 567 (0667), 582-584 (0688, 0690), 586, 588, 589,
594, 608, 620, 621, 625, 641, 676, 678, 685, 686.
 - Guarantees----- 594
 - Opportunities----- 584 (0690), 587 (0692), 688
- Ailments, symptoms, treatments and remedies----- 611
(0714), 665, 670, 682, 689
- Business status, advantages, or connections—
 - Associates----- 634
 - Commercial enterprise being—
 - Noncommercial, altruistic, or religious, or mystical
group----- 634
 - University----- 634
 - Through issuing certificates or diplomas “conferring”
degrees----- 634
 - Correspondence school being—
 - University----- 530 (1222), 550 (1259)

¹ Page references to stipulations of the special board are indicated by italics. Such stipulations are also distinguished by figure “0” preceding the serial number, e. g., “01”, “02”, etc.

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Business status, advantages, or connections—Continued.

| | Page |
|------------------------------------------------------|-------------------------------------------------------------|
| Dealer being— | |
| Custom tailor..... | 523 (1212) |
| Grower..... | 505 (1184) |
| Importer..... | 528 (1219) |
| Manufacturer..... | 498 |
| | (1173), 511, 519 (1208), 525, 528 (1219), 539 (1237), |
| | 540 (1240), 542 (1244), 551, 590, 692 (0796). |
| Packer..... | 498 (1173) |
| Dealer owning or operating— | |
| Factory..... | 523 (1212), 541 (1242) |
| Through depictions..... | 523 (1212) |
| Laboratories..... | 501, 529, 611 (0714) |
| Mills..... | 529 |
| Foreign place of business..... | 537 (0692) |
| Number of dealers..... | 622 (0726) |
| Plant or offices..... | 547 (1252) |
| Professional staff..... | 552 (1262) |
| Size..... | 523 (1212) |
| Staff..... | 634 |
| Vendor being prospective employer..... | 596 |
| Commission ruling as to nature of product..... | 503 (1180) |
| Competitive products..... | 587 (0693), 669 |
| Composition of product..... | 519, |
| | (1207), 520, 523 (1213), 530 (1223) 537 (1235), 590 |
| Through depictions..... | 537 (1235) |
| Correspondence school being university..... | 524, 533 (1228) |
| Demand for or opportunity in product or service..... | 596, |
| | 598 (0704), 620, 621 |
| Domestic product or materials being imported..... | 527, |
| | 528 (1219), 537 (1234) |
| Earnings or profits— | |
| Agents or dealers..... | 511, |
| | 563, 564, 567 (0667), 582-584, (0688, 0690), 586, 588, 589, |
| | 594, 608, 620, 621, 625, 641, 676, 678, 685, 686. |
| Territory..... | 511 |
| Products or service purchased..... | 596, 598 (0704), 676 |
| Free— | |
| Products..... | 524, 547 (1252), 634 |
| Samples..... | 587 (0692) |
| Service..... | 626, 634 |
| Trial..... | 632 |
| Government approval or indorsement.. | 520, 526 (1217), 543 (1245), 643 |
| Advertising..... | 520 |
| Bureau of Standards tests..... | 526 (1217) |
| Foreign government official, sponsorship of..... | 526 (1217) |
| Guarantees..... | 511, 547 (1252), 594, 643 |
| History of product or service..... | 501, 570 (0669), |
| | 602, 611 (0714), 632, 634, 647, 689 |

STIPULATIONS

Advertising falsely or misleadingly—Continued.

| As to—Continued. | Page |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Indorsements, approval or testimonials..... | 520, 543 (1245), 570 (0669), 634, 639, 643 |
| Government or official..... | 543 (1245), 634 |
| Liquidation sale..... | 545 |
| Made to order..... | 590 |
| Money-back guarantee..... | 539 (1238), 689 |
| Nature of manufacture of product in general..... | 494, 516 (1201), 535 (1232), 536, 543 (1246), 544 (1248), 590 |
| Through— | |
| Professional or scientific design..... | 504, 505 (1183), 506, 508-510, 513 (1197), 514, 516 (1202), 517 (1204), 519 (1208), 521. |
| Nature of product or service..... | 493, 507 (1186), 528 (1219), 529, 532 (1226), 535 (1232), 542 (1244), 543 (1246), 544 (1248), 547 (1252), 570 (0669), 580 (0682), 607, 608, 628 (0729), 634, 645, 647, 658 (0769), 685, 687, 689, 692 (0796). |
| Need for product..... | 532 (1226) |
| Opportunities in product or service..... | 584 (0690), 587 (0692) |
| Patent rights owned by manufacturer..... | 500 |
| Prices..... | 495, 539 (1237), 542 (1244), 545 |
| Prize contests..... | 657 |
| Qualities, properties, or results of product, service, or treatment.. | 494, 501, 502 (1179), 504, 505 (1183), 506, 508-510, 513 (1197), 514, 516 (1202), 517 (1204), 519 (1208), 521-523 (1212), 525, 526 (1217), 528 (1219), 531 532 (1226), 538, 542 (1244), 543 (1245), 550 (1258), 554, 555-562 (0661), 565-580 (0681), 581 (0683, 0684), 584 (0689), 587 (0693), 590-592, 595, 598 (0702, 0703), 602-619 (0722), 622 (0725, 0726), 626-639, 642 (0743)-656 (0769), 663-674, 679 (0784)- 685, 687-692 (0796). |
| Quality..... | 505 (1184), 532 (1225), 535 (1231), 547-548 (1254) |
| Safety of product..... | 501, 517 (1203), 543 (1245), 565, 602, 607, 628 (0729), 665, 692 (0796) |
| Second-hand or reconditioned being new..... | 544 (1247) |
| Source or origin of product— | |
| Maker..... | 498 (1174) |
| Place..... | 493, 498 (1174), 503 (1180), 505 (1184), 537 (1234), 587 (0692), 692 (0796) |
| Special or limited offers..... | 596, 634 |
| Success accomplished..... | 611 (0714), 622 (0726), 639 |
| Unique character of product or service..... | 502 (1179), 587 (0692), 626, 632, 634, 656 (0769), 671, 682 |
| Use made..... | 570 (0669), 608, 665 |
| Value of product..... | 495, 547 (1252), 596, 678 |
| Assuming or using misleading trade or corporate name: | |
| As to— | |
| Commercial enterprise being university..... | 634 |
| Correspondence school being university..... | 524, 530 (1222), 533 (1228), 550 (1259) |
| Dealer being manufacturer..... | 511, 537 (1235), 545 |

STIPULATIONS

Assuming or using misleading trade or corporate name—Continued.

As to—Continued.

| | |
|---------------------------------|---------------------------|
| Dealer owning or operating— | Page |
| Factory..... | 541 (1242) |
| Laboratories..... | 501, 529, 611 (0714), 647 |
| Mills..... | 529 |
| Foreign place of business..... | 587 (0692) |
| Individual being institute..... | 687 |

Claiming or using indorsements and/or testimonials falsely or misleadingly:

As to or from—

| | |
|-------------------------------------------------|------------------------|
| Government approval..... | 526 (1217), 543 (1245) |
| Sponsorship of foreign government official..... | 526 (1217) |
| Tested by Bureau of Standards..... | 526 (1217) |
| Physicians..... | 570 (0669) |
| Supposed users..... | 639, 643 |

By—

| | |
|----------------------------------------------------------------|-----|
| Claiming falsely government approval of untrue statements..... | 520 |
| Using untrue..... | 520 |

Disparaging or misrepresenting competitors, their business, or products:

Products—

| | |
|----------------------------|------------|
| Composition..... | 548 (1255) |
| Nature..... | 548 (1255) |
| Nature of manufacture..... | 548 (1255) |
| Qualities..... | 587 (0693) |
| Safety..... | 669 |

Misbranding or mislabeling:

As to—

| | |
|---------------------------------------------------------------------|------------------------------------------------|
| Composition of product..... | 507, (1187), 512 (1195), 513 (1198) |
| 518, 523 (1213), 533 (1227), 534, (1229), 537 (1235), 549, 553 | |
| Through depictions..... | 537 (1235) |
| Dealer being manufacturer..... | 534 (1230), 540 (1240) |
| Dealer owning or operating— | |
| Laboratories..... | 529 |
| Mills..... | 529 |
| Domestic product being imported.... | 537 (1234), 540 (1239), 552 (1261) |
| Foreign product being domestic..... | 542 (1243) |
| Nature of manufacture of product..... | 533 (1227), 535 (1232) |
| Through professional or scientific design..... | 504, |
| 505 (1183), 506, 508-510, 513 (1197), 514, 516 (1202), 517 | |
| (1204), 519 (1208), 521 | |
| Nature of product..... | 512 (1196), 534 (1230), 535 (1232), 542 (1244) |
| Qualities, properties or results of product..... | 503 |
| (1181), 504, 505 (1183), 506, 508-510, 513 (1197), 514, 516 (1202), | |
| 517 (1204), 519 (1208), 521, 542 (1244), 607 | |
| Quality..... | 502, (1178) |
| 532 (1225), 533 (1227), 535 (1231), 547 (1253), 548, (1254) | |
| "Seconds"..... | 499 |
| Through price misrepresentation..... | 499 |
| "Throw-outs" or manufacturer's byproducts..... | 499 |

STIPULATIONS

Misbranding or misleading—Continued.

As to—Continued.

| Source or origin of product— | Page |
|------------------------------------------------------------|-------------|
| Maker..... | 498 (1174) |
| Place..... | 498 (1174), |
| 537 (1234), 540 (1239), 541 (1241), 546 (1250), 552 (1261) | |

Misrepresenting business status, advantages or connections:

As to—

| | |
|-----------------------------------------------------------------------|------|
| Commercial enterprise being— | |
| Noncommercial, altruistic, or religious, or mystical group.. | 634 |
| University..... | 634 |
| Through issuing certificates or diplomas "conferring" degrees..... | 634 |
| Correspondence school being university..... | 524; |
| 530 (1222), 533 (1228), 550 (1259) | |

Dealer being—

| | |
|----------------------------------------------------------------------------------------------------------------|-------------|
| Custom tailor..... | 523 (1212) |
| Grower..... | 505 (1184) |
| Importer..... | 528 (1219) |
| Manufacturer..... | 498 (1173), |
| 511, 525, 528 (1219), 534 (1230), 537 (1235), 539 (1237), 540 (1240), 542 (1244), 545, 551, 590, 692 (0796) | |
| Packer..... | 498 (1173) |

Dealer owning or operating—

| | |
|-------------------------|---------------------------|
| Factory..... | 523 (1212), 541 (1242) |
| Through depictions..... | 523 (1212) |
| Laboratories..... | 501, 529, 611 (0714), 647 |
| Mills..... | 529 |

| | |
|----------------------------------------|-----------------|
| Foreign place of business..... | 587 (0692) |
| Individual being institute..... | 687 |
| Liquidation being in process..... | 545 |
| Number of dealers..... | 622 (0726) |
| Plant or office..... | 520, 547 (1252) |
| Through depictions..... | 520, 547 (1252) |
| Professional staff..... | 552 (1262) |
| Size..... | 523 (1212) |
| Vendor being prospective employer..... | 596 |

Misrepresenting prices:

Through representing—

| | |
|------------------------------------------------------|-----------------|
| Fictitious exaggerated as usual or contemplated..... | 495, 539 (1237) |
| Usual or regular as— | |
| Reduced..... | 678 |
| Wholesale..... | 542 (1244) |

Misrepresenting product:

As to—

Dealer being—

| | |
|-------------------|------------|
| Manufacturer..... | 498 (1173) |
| Packer..... | 498 (1173) |

Nature of manufacture—

| | |
|--------------------------------|-----------------|
| Ready-made as tailor-made..... | 523 (1212), 525 |
|--------------------------------|-----------------|

STIPULATIONS

Offering deceptive inducements to purchase:

Through—

| | Page |
|-----------------------------------------------------------|--------------------------|
| Representing or offering, falsely or misleadingly— | |
| Cheaper product, through coupon use..... | 547 (1252) |
| Coupon values..... | 547 (1252) |
| Free— | |
| Product or service..... | 626, 634 |
| Through coupon use..... | 547 (1252) |
| Service— | |
| On pretext— | |
| Advertisements..... | 524 |
| Special selection of prospect..... | 524 |
| Price of which included in charge otherwise demanded..... | 524 |
| Trial..... | 682 |
| Guarantees..... | 511, 547(1252), 594, 643 |
| Liquidation sale..... | 545 |
| Money back guarantee..... | 539(1238), 689 |
| Special or limited offers..... | 596, 634 |
| On pretext prospect's special selection..... | 634 |
| Using prize advertisements, falsely or misleadingly..... | 657 |

Securing agents falsely or misleadingly:

Through—

Misrepresenting—

| | |
|---------------------------------------------------------------|-----------------------------|
| Earnings..... | 511,) |
| 563, 564, 567 (0667), 577, 581 (0685), 582-584 (0688, 0690), | |
| 586, 588, 589, 594, 596, 598 (0704), 608, 620, 621, 625, 641, | |
| 676, 678, 685, 686 | |
| Opportunities..... | 534 (0690), 537 (0692), 686 |
| Territory as exclusive..... | 511 |
| Using prize advertisements falsely or misleadingly..... | 657 |

Selling below cost, in violation of code..... 495

Simulating:

| | |
|-------------------------------|-----------------|
| Labels of competitor..... | 498 (1174) |
| Trade name of competitor..... | 498 (1174), 515 |

Unfair methods of competition condemned. See —

- Advertising falsely or misleadingly.
- Assuming or using misleading trade or corporate name.
- Claiming or using indorsements and/or testimonials falsely or misleadingly.
- Disparaging or misrepresenting competitors, their business, or products.
- Misbranding or mislabeling.
- Misrepresenting business status, advantages or connections.
- Misrepresenting prices.
- Misrepresenting product.
- Offering deceptive inducements to purchase.
- Securing agents falsely or misleadingly.
- Selling below cost, in violation of code.
- Simulating.
- Using lottery scheme in merchandising.
- Using misleading trade name, mark or brand.
- Violating N. R. A. codes.

STIPULATIONS

| | Page |
|---------------------------------------------------|----------------------------------------------------------------|
| Using lottery scheme in merchandising..... | 526 |
| | (1216), 528 (1220), 546 (1251), 620, 676 |
| Using misleading trade name, mark or brand: | |
| As to— | |
| Composition of product..... | 519 (1207), 534 (1229) |
| Domestic product being imported..... | 537 (1234) |
| Nature of manufacture of product..... | 516 (1201), 535 (1232) |
| Through— | |
| Professional or scientific design..... | 504, |
| | 505 (1183), 506, 508-510, 513 (1197), 514, 516 (1202), 517 |
| | (1204), 519 (1208), 521. |
| Nature of product..... | 493, 512 (1196), 535 (1232) |
| Qualities, properties or results of products..... | 513 |
| | (1197), 514, 516 (1202), 517 (1204), 519 (1208), 521, 554, 685 |
| Source or origin of product— | |
| Maker..... | 498 (1174), 515 |
| Place..... | 498 (1174), 503 (1180), 537 (1234), 587 (0692) |
| Violating N. R. A. codes..... | 495 |



