

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JULY 10, 1936, TO NOVEMBER 30, 1936

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF NOVEMBER 30, 1936

CHARLES H. MARCH, *Chairman.*

Took oath of office February 1, 1929, and August 27, 1935.¹

GARLAND S. FERGUSON.

Took oath of office November 14, 1927, January 9, 1928,¹ September 26,
1934,² and February 9, 1935.³

EWIN L. DAVIS.

Took oath of office May 26, 1933.

WILLIAM A. AYRES.

Took oath of office August 23, 1934.

ROBERT E. FREER.

Took oath of office August 26, 1935.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

¹Second term.

²Recess appointment.

³Third Term.

ACKNOWLEDGMENT

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

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² Interlocutory order. See also S. & D. 721.

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¹ For interlocutory order see "Memoranda," 20-744 or S. & D. 720.

² For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

³ Interlocutory order. See S. & D. 722.

⁴ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

⁷ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

⁸ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

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⁹ For final decree of Supreme Court of the District of Columbia, see "Memoranda," 3-642 et seq., or S. & D. 190.

¹⁰ For interlocutory order, see "Memoranda," 20-744, or S. & D. 720.

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¹² For interlocutory order, see "Memoranda," 20-745 or S. & D. 722.

¹³ For interlocutory order, see "Memoranda," 20-745 or S. & D. 723.

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¹⁴ For interlocutory order, see "Memoranda," 20-745 or S. & D. 721.

¹⁵ For interlocutory order, see "Memoranda," 20-744 or S. & D. 721.

¹⁶ For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus, etc., see "Memoranda," 20-742 or S. & D. 704.

¹⁷ For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda," 20-742 or S. & D., footnote, 650.

¹⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.

¹⁹ For interlocutory order, see "Memoranda" 20-744 or S. & D. 719.

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²⁰ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

²¹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

²² For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.

²³ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

²⁴ For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

²⁵ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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²⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

²⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or S. & D. 715.

For memorandum of decision of the Supreme Court of the District of Columbia declining to grant a supersedeas to operate as an injunction against Commission, pending appeal, and final decree dismissing plaintiff's bill on Nov. 15, 1927, see "Memoranda," 20-742 or S. & D. 651.

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²⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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²⁰ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

²⁰ For interlocutory order, see "Memoranda," 20-742 or S. & D. 715.

²¹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 718.

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 10, 1936, TO NOVEMBER 30, 1936

IN THE MATTER OF

MARCONI RADIO CORPORATION ET AL.

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

Docket 2214. Complaint, May 25, 1935¹—Decision, July 10, 1936

Where the names, letter combinations, and symbols "Edison," "Bell," representation of a bell and name "Blue Bell," "Marconi," "Victor," "Brunswick," "Majestic," "R. C. A.," "E. B.," and "G. E.," and same letters written in script in a circle, with scroll-like interior decoration, had come to have a peculiar meaning in the radio world and among dealers and the buying public and in foreign countries, and to convey to the public mind a significance distinct from other names employed in such trade or world as meaning the radio and other products of certain well-known concerns, and to be associated with certain famous inventors in the field of sound transmission and with their successors in interest, and the value of said products, thus identified by said names, combinations, and symbols, made and sold by said concerns and interests, had come to amount to millions of dollars annually, and said names, etc., as those of well-known and long-established individuals, companies, and corporations, used as such and as standard brands, marks, and symbols on radio sets, tubes, etc., had come to have a fixed and stable value generally throughout the United States and foreign countries, and to be relied upon by the purchasing public as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of said products and increased sales, and said names, etc., as attached to such standard brand products, had come to have value to the thousands of dealers therein, in addition to their value to the owners and users thereof in commerce; and thereafter three corporations and four individuals, engaged in the manufacture and sale of relatively cheap, shoddy, and inferior radio receiving sets, tubes, and other parts, made or assembled at various unknown points and marked, branded, and labeled with names, symbols, and brands of their own selection and entire business of which, operated as a chain or family group, was controlled by one of said individuals and practice of which, possessed of little or no assets and embarrassed financially, was frequently to move from place to place and to incorporate under new charters and names as different companies, and which had operated under no less than 50 different corporate and trade names, and annual sales of which had amounted to more than \$100,000 annually—

¹ Amended and supplemental.

- (a) Adopted and used as corporate, company, and trade names and as marks, brands, and designations placed, in various combinations upon their said tubes and like products, without authority or consent of corporations and interests for which said names, marks, etc., had come to stand, including the famous inventors as predecessors of some of the companies and interests thus identified, names, letters, and designations "Edison," "Edison-Bell," "Marconi," "Bell," and representation of a bell, "Victor," "Brunswick," or "Majestic," letters "R. C. A.," and such colorable imitations as "Bronswick," letters "R. S. A." or "R. C. I." and letters "EB" in script, in a circle with a scroll-like interior decoration and in colorable imitation of letters "G. E." in script, etc., and the representation of a bell;

With capacity and tendency to lead public to believe that products thus marked or identified by use of such names, letters, and monograms, and simulations thereof were those of said well-known respective companies or interests and with result that there was an appropriation by said corporations and individuals of good will of aforesaid competitive companies and interests and an unfair diversion of business from such competitive companies, etc., and from other competitors who do not resort to such practices, to the injury of the owners of said marks, etc., and of said competitors and to the prejudice and injury of the public, and to the damage and injury of the lawful owners of said names, etc., and of the industry and the public, members of which purchased such misbranded radio sets, etc., as and for the genuine products, and dealers in such sets, etc., were forced to misbrand or place standard brand names or symbols on like products sold by them in order to meet such competition of said corporations and individuals and other dealers engaged in manufacture and sale of such misbranded products, and of placing in the hands of dealers and others means whereby injury and damage might be and was done to competitors dealing in genuine products honestly marked;

- (b) Placed or caused to be placed upon their aforesaid products, acting in cooperation among themselves and with others, in the course and conduct of their said business, aforesaid standard brands, names, letters, etc., attached to such products, and upon the containers thereof, displayed usually in large and easily discernible bold lettering, with own names in small and hardly discernible letters; and
- (c) Advertised said company, corporate and trade names and products thus marked in newspapers and periodicals and other bulletins circulated through the mails, in cooperation among themselves and with other jobbers and dealers throughout the several States and foreign countries selling and shipping such sets, tubes, etc., with advertisements so worded as to convey to minds of purchasing public false impression that products thus advertised were the genuine standard makes or brands;

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Frederick W. Solomon, of Boston, Mass., for respondents, and who also appeared along with *Mr. Morris D. Kopple*, of New York City, for Marconi Radio Corp. and Edison Radio Stores, Inc.

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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 Marconi Radio Corporation, Edison Radio Stores, Inc., Stuart Radio Corporation, and Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal individually and severally trading under the names The Perfection Radio Stores, Harvard Radio Stores, and Post Radio Company, hereinafter referred to as 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Marconi Radio Corporation, is a corporation organized under and by virtue of the State of New York in 1933, with its principal offices and place of business located at 23 East Twenty-first Street, in the city of New York, State of New York.

(b) Respondent, Edison Radio Stores, Inc., is a corporation organized under and by virtue of the laws of the State of New York in 1931, with its principal offices and place of business at 23 East Twenty-first Street, in the city of New York, State of New York.

(c) Respondent, Stuart Radio Corporation, is a corporation organized under and by virtue of the laws of the State of Massachusetts in 1934, with its offices and principal place of business at 58 Stuart Street in the city of Boston, State of Massachusetts.

(d) Respondent, Joseph E. Frank, is an officer, director, and stockholder in respondent corporations Marconi Radio Corporation, Edison Radio Stores, Inc., and Stuart Radio Corporation, and is president of Edison Radio Stores, Inc.

(e) Respondents, S. A. Frank and A. M. Frank are stockholders, officers, and directors in respondent corporations Marconi Radio Corporation, Edison Radio Stores, Inc., and Stuart Radio Corporation, and said respondent S. A. Frank is vice president of respondent Marconi Radio Corporation.

(f) Respondent, G. Blumenthal, is a stockholder, officer, and director in respondent corporations Marconi Radio Corporation, Edison Radio Stores, Inc., and Stuart Radio Corporation, and is president of Marconi Radio Corporation.

¹ Amended and supplemental.
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(g) Respondents, Joseph E. Frank, S. A. Frank, A. M. Frank, G. Blumenthal and others, incorporated or caused to be incorporated respondent corporations Marconi Radio Corporation, Edison Radio Stores, Inc., and Stuart Radio Corporation and said respondent individuals are engaged in the management, operation, and promotion of the business of said respondent corporations for whom they act also as salesmen and agents and are or have been for more than one year last past, holders or owners of the legal or beneficial title or interest in or to the outstanding stock of said corporations. Said respondents, Joseph E. Frank, S. A. Frank, A. M. Frank, G. Blumenthal, and others, also carry on business individually and severally as partners under the trade names The Perfection Radio Stores, located in the city of New York, State of New York; Harvard Radio Stores, located at 70 Stuart Street in the city of Boston, State of Massachusetts; Post Radio Company, located at 605 Market Street, city of Philadelphia, State of Pennsylvania. The business carried on by said respondent corporations and said respondent individuals is essentially a single business, namely, that of manufacturing or assembling radio sets and manufacturing radio tubes and selling said radio sets and radio tubes to the trade and the purchasing public and the profits from the operations of the business thus conducted enure chiefly to said respondents Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal. Said business is dominated and controlled by said respondent Joseph E. Frank who manages, dictates, and directs its policies.

PAR. 2. Respondents Joseph E. Frank, S. A. Frank, A. M. Frank, G. Blumenthal, and others, in the course and conduct of their business, as set out in paragraph 1, having caused to be incorporated Marconi Radio Corporation and Edison Radio Stores, Inc., operate and conduct business in said corporate names and other corporate and trade names and designations, and have used and are using said names Marconi Radio Corporation and Edison Radio Stores, Inc., and other names and designations as marks or brands affixed to and to designate radio sets and radio tubes manufactured, sold, and shipped in interstate and foreign commerce by respondents Marconi Radio Corporation, Edison Radio Stores, Inc., and Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal, individually and severally. The said corporate name Marconi Radio Corporation is formed by the joinder of the name "Marconi" with the words "Radio Corporation." The name "Marconi" refers to and is used to designate the well-known and universally acclaimed Italian engineer and electrician, Guglielmo Marconi. The said corporate name Edison Radio Stores, Inc., is formed by the joinder of the name "Edison" with the words "Radio Stores, Inc." The said name "Edison"

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refers to and is used to designate Thomas A. Edison, the well-known and outstanding inventor in the electric, radio, and sound transmission fields. The use by respondents of the names "Marconi" and "Edison" in the manner set out hereinabove in paragraphs 1 and 2 is without the authority or consent of the rightful owners of said names.

PAR. 3. Respondent individuals and corporations cooperating with each other among themselves and together with others are now and have been for more than one year last past engaged in the manufacture of radio sets and radio tubes and the sale of said radio sets and said radio tubes between and among the various States of the United States, causing said radio sets and said radio tubes when sold by them to be transported from their several places of business located in the States of New York, Massachusetts, and Pennsylvania, and other States, through and into various other States of the United States, the District of Columbia and foreign countries, and there is now and has been for more than one year last past a constant current of trade and commerce by said respondents and others in such radio sets and radio tubes between and among the various States of the United States, the District of Columbia and foreign countries. In the course and conduct of their business said respondents and others are now and have been for more than one year last past in substantial competition with other corporations, partnerships, and persons engaged in the sale of radio sets and radio tubes between and among the various States of the United States, the District of Columbia and foreign countries in interstate and foreign commerce.

PAR. 4. Respondents Marconi Radio Corporation, Edison Radio Stores, Inc., Stuart Radio Corporation, and respondents Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal individually and severally trading under the names The Perfection Radio Stores, Harvard Radio Stores, and Post Radio Company, and as officers and directors of said respondent corporations, cooperating with each other among themselves and together with others in the course and conduct of their business, as set out in paragraphs 1, 2, and 3, have conceived and are carrying out a general scheme to deceive the public and to compete unfairly with other dealers in radio sets and radio tubes who are in competition in interstate and foreign commerce with said respondents and others. Said scheme involves the adoption and use of fictitious, false, and deceptive corporate names and trade names and the placing of false and deceptive name plates and labels on the radio sets and radio tubes so manufactured, sold, and shipped. In furtherance of such scheme and as instrumentalities to effect their purposes, said respondents, without authority, have appropriated and used and are now using upon radio sets and radio tubes sold by them and upon

wrappers, cartons, and containers in which they are enclosed when shipped, and upon letterheads and other printed matter circulated through the mails, various names and devices or colorable imitations thereof which are or have been in use by established manufacturers upon and in connection with radio sets and radio tubes or similar merchandise. Said respondents and others attach such false name plates and marks to radio sets and radio tubes manufactured, assembled, sold, and shipped by them from their several places of business in the States of New York, Massachusetts, and Pennsylvania, and other States throughout the several States of the United States, the District of Columbia and foreign countries in interstate and foreign commerce by means of name plates, stamps, stencils, and labels. Among the name plates, marks, and labels so being used by respondent are the following:

"Marconi," "Marconi International," "Marconi" with the representation of a bell, "Marconi Radio Corporation," "Edison," "Edison Radio Stores," "Edison Complete," "Edison Chimes," "Edison International," "Edison Radio Stores, Inc.," "Edison-Bell," "Edison" with the representation of a bell, "Bell," "Bell" with the representation of a bell, "Victor," "Victor International," "Victor Television," "Victor" with the representation of a bell, "Majestic," "Brunswick (Brunswick)," the letters "RSA" and "RCI," and a device of a circle with scroll-like interior projections enclosing the script letters "EB," either standing alone or printed upon the representation of a bell, and the names "Marconi," "Edison," "Bell," "Victor," "Majestic," and "Brunswick (Brunswick)," standing alone or in conjunction with other names and devices or prefixes or suffixes in connection therewith.

PAR. 5. The use by respondents, Marconi Radio Corporation, Edison Radio Stores, Inc., Stuart Radio Corporation, and Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal individually and severally trading under the names The Perfection Radio Stores, Harvard Radio Stores, and Post Radio Company, and other corporate and trade names, of the names, including the corporate names "Marconi Radio Corporation" and "Edison Radio Stores, Inc.," and devices as set out in paragraphs 1, 2, 3, and 4 is wholly unauthorized by the owners of said names and devices and gives to respondents' goods a salability which they would not otherwise have and gives said respondents an advantage over their competitors who do not use such means because the true origin of respondents' goods is concealed and a reputable but false origin is attributed to them. Moreover, it is the appropriation by respondents of the reputation and good-will of others at the expense of and injury to such others who have created such reputation and good-will, and deceived the public into believing

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that respondents' products originate with well-known and reputable concerns contrary to the fact. Thereby substantial injury is done by respondents to competitors and substantial competition in interstate and foreign commerce.

PAR. 6. (a) The name "Marconi" refers to and is generally recognized as the name of Guglielmo Marconi, the engineer and electrician who first perfected the appliances used in space telegraphy or radiography and the application of electric waves to actual telegraphy and the inventor of various electrical and radio devices among which is the celebrated "Fleming Tube," a tube used in radio sets. Marconi Wireless Telegraph Company of America, a corporation organized in 1899 under and by virtue of the laws of the State of New Jersey, acquired from said Guglielmo Marconi the exclusive right to the use and exploitation of all of the said Guglielmo Marconi patents and inventions, including the use of the name "Marconi" in and throughout the United States and its territories and possessions. In 1919 the said Marconi Wireless Telegraph Company of America sold, transferred, and assigned to Radio Corporation of America all of its right, title, and interest in and to said "Marconi" patents and inventions, including the right to the use of the name "Marconi" in connection therewith. The name "Marconi" is the rightful property of the Radio Corporation of America and its subsidiaries. Ever since the date of their acquisition in 1919, said Radio Corporation of America and its subsidiaries have continuously used and extensively advertised and are now using and advertising radio sets, radio tubes, and other products containing said "Marconi" patents and inventions. Said radio sets, radio tubes, and other products are sold and shipped in interstate and foreign commerce by said Radio Corporation of America and its subsidiaries.

(b) For many years last past the Victor Talking Machine Co., Camden, New Jersey, has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records, and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines, sold and shipped in interstate and foreign commerce.

In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Co. and organized a company under the corporate name "RCA-Victor Co.," and also organized a company under the name of "The RCA Manufacturing Co., Inc.," which

company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets. All of said sets bear the name "Victor," either alone or in combination with other letters or words in a prominent place on said sets. Said radio sets and combination radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past 25 years the Victor Talking Machine Co. has spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently appeared in said advertising. At the present time RCA-Victor Co. is advertising its radio sets and radio tubes in a number of magazines having a large national circulation and in other publications and newspapers.

The name "Victor" when used on radio sets and radio tubes is the rightful property of the RCA-Victor Co. and the Victor Division of the RCA Manufacturing Co.

The said initials "RCA" have long been used as marks or brands to designate radio sets and radio tubes and other merchandise manufactured, sold, and shipped in interstate and foreign commerce by said RCA-Victor Co., the Victor Division of the RCA Manufacturing Co., and the Radio Corporation of America.

The device or initials "RSA" and "RCI" used by respondents are colorable imitations of "RCA," the recognized abbreviation of a corporate name of the well-known company, viz, Radio Corporation of America.

PAR. 7. For more than 30 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, dictaphones, and transmitting 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 part of their brand, and such name "Edison" has acquired a valuable goodwill as identifying the manufacturer of said 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 the machines and

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articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1926-1930, 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 the radio sets manufactured and sold by Thomas A. Edison, Inc., feature the name "Edison" as part of their brand name.

The name "Edison" refers to Thomas A. Edison, the great inventor in the electrical field and the pioneer in the talking machine and radio industry, the right to the use of which name was vested in Thomas A. Edison, Inc., by Thomas A. Edison and was extensively advertised and has long previously been used and continues to be used by Thomas A. Edison, Inc., on radio sets, phonographs, and other electrical devices and appliances, sold and shipped in interstate and foreign commerce.

PAR. 8. During many years last past the Brunswick-Balke-Collender Co. 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 for many years last past. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand name, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Co. 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 of said Brunswick-Balke-Collender Co. was sold to Warner Brothers Pictures, Inc., which company organized the 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 combination radio and phonograph sets.

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" has been prominently featured. Since January 1, 1933, the manufacture of radio sets by Brunswick Radio Corporation has been suspended, but said Brunswick Radio Corporation still owns the manufacturing plants in which said sets were manufactured and may resume such manufacture at sometime in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-

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Balke-Collender Co. and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States and in foreign countries. During all the time the Brunswick-Balke-Collender Corporation and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets said companies expended large sums of money in advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

"Bronswick" the name used by respondents is a colorable imitation of the name "Brunswick" which has long been previously used by the Brunswick-Balke-Collender Co. and the Brunswick Radio Corporation on radio sets, phonographs, and combination radio and phonograph sets.

PAR. 9. The name "Bell" and the representation of a bell, when used in connection with sound reproduction and sound transmission in the electrical and radio field refers to the great inventor Alexander Graham Bell and is the property of the said Alexander Graham Bell and his successors and assigns. The common law title to the name "Bell" is vested, by long and continued use since 1886, in the American Telephone & Telegraph Company, its subsidiaries and associates, and the Western Electric Company, Inc. Western Electric Company, Inc., manufactures, sells, extensively advertises, and ships radio sets, radio tubes, and radio batteries in interstate and foreign commerce, and uses the name "Blue Bell" and the representation of a bell as a brand name to designate its said products. The representation of a bell has long been used and extensively advertised by the American Telephone & Telegraph Company as a symbol or trade designation in its business.

PAR. 10. The name "Majestic" is a name long associated with radio sets and is the legal property of Grigsby-Grunow Company who are the original makers of radio sets branded with the name "Majestic," which are extensively advertised, sold, and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Frank McKey as trustee in bankruptcy for the creditors of said Grigsby-Grunow Company. The said trustee holds title thereto by virtue of authority vested in him by the United States District Court for the Northern District of Illinois.

PAR. 11. A device of a circle with scroll-like interior projections enclosing the script letters "G. E." is the property of General Electric Company and has long been used and extensively advertised by said General Electric Company as a mark or brand to designate the products manufactured, sold and shipped in interstate and foreign

commerce by said General Electric Company. The device used by respondents of a circle with scroll-like interior projections enclosing the script letters "E. B." is a colorable imitation used by respondents of this well-known device.

PAR. 12. The sale and delivery by respondents to retail dealers of radio sets and radio tubes marked and branded with the names, designations, and letters, as set out in paragraph 4, of well-known manufacturers, without the authority or consent of the owners thereof places in the hands of others the means whereby injury might be done to competitors and to the prejudice of the public, and all of the acts and things alleged and done by respondents are each and all of them to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate and foreign 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 8th day of August 1934, issued its original complaint and caused the same to be served upon the respondents, Marconi Radio Corporation of New York, N. Y., and the Edison Radio Stores, Inc., of New York, N. Y. Each of respondents filed separate answers to the complaint with the Commission on September 1, 1934.

On the 25th day of May 1935, the Federal Trade Commission filed an amended and supplemental complaint herein, charging respondents with cooperating among themselves and together with others in the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and caused same to be served upon the respondents, Marconi Radio Corporation, Edison Radio Stores, Inc., both of New York, N. Y., Stuart Radio Corporation of Boston, Mass.; Joseph E. Frank, S. A. Frank, A. M. Frank, G. Blumenthal, each individually and as partners, trading as Perfection Radio Stores of New York, N. Y.; Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal, each individually and as partners, trading as Harvard Radio Stores of Boston, Mass.; Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal, each individually and as partners, trading as Post Radio Company, of Philadelphia, Pa.

Each of the respondents filed answer to the amended and supplemental complaint on the 20th day of July 1935.

Thereafter testimony and documentary evidence in support of the allegations of said amended and supplemental complaint were introduced by Carrel F. Rhodes, attorney for the Commission, before Robert S. Hall, examiner of the Commission, theretofore duly designated and appointed by it, and in defense of the allegations of said complaint by Frederick W. Solomon, attorney for the respondents, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint, the answers thereto, testimony and evidence, and brief in support of the amended and supplemental complaint, and the Commission having duly considered the same, makes this its findings as to the facts and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1:

a. Respondents, Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal, are individuals. Joseph E. Frank and S. A. Frank reside in the State of Massachusetts. A. M. Frank and G. Blumenthal reside in the State of New York. These individuals have been engaged in the radio business for a number of years.

b. Respondent, Marconi Radio Corporation, is a corporation organized under the laws of the State of New York in 1933, with its principal office and place of business at 23 East Twenty-first Street, New York City, State of New York.

c. Respondent, Edison Radio Stores, Inc., is a corporation organized under the laws of the State of New York in 1931, with its principal office and place of business at 23 East Twenty-first Street, New York City, State of New York.

d. Respondent, Stuart Radio Corporation, is a corporation organized under the laws of the State of Massachusetts in 1934, with its office and principal place of business at 58 Stuart Street, in the city of Boston, State of Massachusetts, and is a retail outlet in Massachusetts for the products manufactured and sold by Marconi Radio Corporation and Edison Radio Stores, Inc.

e. Respondents, Perfection Radio Stores, Harvard Radio Stores, and Post Radio Company, are trade names under which respondents Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal formerly operated as copartners in various communities in the States of Massachusetts, New York, Pennsylvania, Maryland, and Washington, D. C., prior to 1934. Said respondent individuals operating

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Findings

under said trade names had gone out of business prior to the issuance of the amended and supplemental complaint.

f. Respondent, Joseph E. Frank, dominated and controlled and dominates and controls all of the business of the several respondent corporations and companies, and all of the relations or dealings of the other said respondent individuals in connection therewith.

PAR. 2. The stock of respondent corporations was issued to respondent, Joseph E. Frank, or through him to the other respondent individuals named in paragraph 1, in no certain amount or denomination, and for little or no consideration, and no dividends were ever paid thereon. The entire business of the said respondent corporations and companies was and is dominated, managed, and controlled as a single business by said respondent, Joseph E. Frank.

Said respondent, Joseph E. Frank, extended his business activities throughout the United States and into foreign countries, and attempted to register with the Spanish Government, the names "Edison," and "Marconi" as trade marks or trade names to designate radio and television receiving sets and related products. Upon the objection of Thomas A. Edison, Inc., the said attempted registration of the said name "Edison," was denied by the Spanish Government on or about the 19th day of February 1935, and upon the objection of the Marconi Company, the said attempted registration of the said name "Marconi," was denied by the Spanish Government on or about February 23, 1935.

PAR. 3. Respondents have little or no known assets and are embarrassed financially. They frequently move from place to place and incorporate and operate under new charters and new names as different companies. Respondent individuals have operated under no less than 50 different corporate and trade names, and since the complaint in this case was filed, have organized and operated, and now operate in cooperation with others under the name Motor Vox Radio Corporation, and other names.

PAR. 4. Respondents were and are engaged in the manufacture and sale of radio receiving sets and parts, including radio tubes, which they manufacture or assemble or cause to be manufactured or assembled for them at various points in secret, unknown, and undisclosed places, which they mark, brand, and label with brands, symbols, and names of their own selection. The various respondent corporations, companies, and business set-ups are linked in a chain and operated as a family group.

PAR. 5. Respondents' products are a cheap, shoddy, and inferior grade, compared to the products they are designed, marked, and branded to imitate.

PAR. 6. Respondent individuals began the manufacture and sale of radios, radio parts, and radio tubes, prior to 1931, and prior to the organization of respondent corporations, and together with respondent corporations have continued in said business, manufacturing, selling, and shipping said products in large quantities. The annual sales of respondents' said products amount to or have amounted to more than \$100,000 annually.

PAR. 7. Respondent individuals and corporations have been for more than 7 years last past, and are now engaged in the manufacture and sale of radio sets and radio tubes in commerce, between and among the various States of the United States and foreign countries, causing said radio sets and radio tubes when sold by them to be transported from their several places of business located in the State of New York, and other States, through and into various other States of the United States and the District of Columbia, and foreign countries, and there is now and has been for more than 7 years last past, a constant current of trade and commerce by said respondents and others in said radio sets and radio tubes, between and among the various States of the United States and the District of Columbia and foreign countries. In the course and conduct of their business, said respondents and others are now and have been for more than 7 years last past, in substantial competition with other corporations, partnerships, and persons engaged in the sale of radio sets and radio tubes and like products in commerce between and among the various States of the United States, and the District of Columbia and foreign countries in interstate and foreign commerce.

PAR. 8. Respondents, in the course and conduct of their said business, adopted in 1931 and used and now use, without authority or consent from the owners and users thereof, as corporation, company, and trade names, and as marks, brands, and designations placed upon or caused to be placed upon radio sets, radio tubes, and like products sold by them, the following names, letters, and designations.

(a) The name "Edison," "Edison-Bell," "Edison International," and "Edison Radio Stores, Inc." and "Edison" in combination with other words, letters, and designations.

(b) The name "Marconi," "Marconi Radio Corporation," "Marconi International," and "Marconi" in combination with other words and designations.

(c) The name "Bell" and the representation of a bell and other combination of words or letters, together with the name "Bell."

(d) The name "Victor," "Victor International," and "Victor" in combination with other words or letters and designations.

(e) The name "Brunswick," or "Bronswick," a colorable imitation of the name "Brunswick," in combination with other words and designations.

(f) The name "Majestic," "Majestic International," "Majestic Radio Corporation," and other combinations of words or letters together with the name "Majestic."

(g) The letters "R. C. A.," and "R. S. A.," or "R. C. I.," colorable imitations of the letters "R. C. A."

(h) The letters "EB" in scrip in a circle with scroll-like interior decorations, a colorable imitation of the letters "G. E.," in scrip in a circle with scroll-like interior decorations.

(i) The representation of a bell.

All of which said names, letter combinations, and symbols are the exclusive property of, and are owned and used by old, established concerns in the electric, radio, sound transmission, and like or related industries as set out in paragraph nine, following.

PAR. 9. The following words, letters, and symbols, when used in the radio world and among dealers and the buying public in the United States and foreign countries, have a peculiar meaning and convey to the public mind a significance distinct from other names employed in such trade and radio world, to wit:

(a) "EDISON." The name Edison refers to Thomas A. Edison, the great discoverer and inventor in the electric field and pioneer in the talking machine and radio industry. Thomas A. Edison enjoyed a long and eventful life and his inventions and patents cover a period beginning in or about the year 1868 and extending to the time of his death on or about October 18, 1931. He made numerous discoveries and inventions and was granted numerous patents in the field of electricity and related arts, including telephony, telegraphy, X-ray apparatus, electric lighting, electric generation, electrically propelled vehicles, phonographs, radio apparatus, moving and talking pictures, and primary and storage batteries.

The electric bulb or incandescent lamp, discovered and perfected by said Thomas A. Edison, is the foundation principal upon which is based the reception, transmission, control, and utilization of electric energy through space.

Since on or about 1888, the name Edison has been used by Thomas A. Edison, Incorporated, a corporation of New Jersey, or its predecessors, including the late Thomas A. Edison, and other corporations and industries organized by him and thereafter succeeded by said Thomas A. Edison, Incorporated, and which had and have the exclusive legal right from him to use the name Edison, as a corporation,

company, or trade name and as a mark or brand on its and their products including radio sets, phonographs, primary batteries, and storage batteries, and other electrical and electrically operated devices and like products manufactured, sold and shipped in interstate and foreign commerce.

Thomas A. Edison, Incorporated, is the owner of various important trade mark registrations of the name Edison, appearing either as the facsimile of the signature of Thomas A. Edison, or the name Edison in type, or the representation of said Edison in other forms, all of which trade marks are duly registered and are of record in the United States Patent Office and are in full force and effect, not having been abandoned by Thomas A. Edison, Incorporated, and which trade marks are of great value to Thomas A. Edison, Incorporated.

Said Thomas A. Edison, Incorporated, and its predecessors having continuously used and exploited and Thomas A. Edison, Incorporated, now uses and exploits said name Edison in said manner throughout the world.

The value of the products, including radio apparatus, manufactured and sold by Thomas A. Edison, Incorporated, and its predecessors has for many years amounted to millions of dollars yearly, and Thomas A. Edison, Incorporated, and its predecessors have spent great sums of money in advertising the name Edison and their said products branded with said name, including approximately \$2,000,000 in advertising radio and phonograph apparatus alone. The name Edison as a corporation, company, or trade name and as a mark or brand on radio sets, primary and storage batteries, electrical and like products, is of great value.

Neither the said Thomas A. Edison, Thomas A. Edison, Inc., or any of the said Edison companies or his or their agents, representatives, assigns, or successors have ever granted permission to respondents to use said name Edison in any way.

(b) "MARCONI." The name Marconi refers to and is recognized as the name of Guglielmo Marconi, the great engineer and electrician who first perfected the appliances used in space telegraphy or radiography and the application of electric waves to actual telegraphy, and the inventor of various electrical and radio devices. Marconi Wireless Telegraph Company of America, a corporation acquired from said Guglielmo Marconi the exclusive right to the use and exploitation of all of the said Marconi patents and inventions, including the use of the name Marconi, in and throughout the United States and its territories and possessions. In 1919 the said Marconi Wireless Telegraph Company of America sold, transferred and assigned to Radio Corporation of America, all of its rights, title, and interest in and to said Marconi

patents and inventions, including the right to the use of the name "Marconi" in connection therewith. The said name "Marconi" in and throughout the United States and its territories and possessions, is the property of the Radio Corporation of America and its subsidiaries, and said name "Marconi" has great value. Said Radio Corporation of America, since 1919, has had and has the exclusive right to the use of the said name "Marconi," used in said manner, and has made use of and extensively advertised and exploited, and uses, advertises, and exploits the said name "Marconi" as a mark or brand upon radio and wireless telegraph sets and related products used, sold, and shipped in interstate commerce.

The value of the products, including radio sets, and related products manufactured and sold annually by Radio Corporation of America and its subsidiaries, and the service of said company, amounts to millions of dollars and the said company and related industries spend and have spent great sums of money in advertising their products and service.

Neither said Guglielmo Marconi, Marconi Wireless Telegraph Company of America, or Radio Corporation of America, his or their agents, representatives, successors, or assigns, have ever granted permission to the respondents to use the name "Marconi" in any way, nor have they abandoned the right to the use thereof.

(c) "BELL." The name Bell and the representation of a bell when used in connection with sound reproduction and sound transmission in the electric and radio and related fields, refers to the great electrical engineer and inventor, Alexander Graham Bell, who discovered and perfected sound transmission by the use of wires. The name "Bell" and the representation of a bell is the property of the American Telephone and Telegraph Company, its subsidiaries and associates. Said American Telephone and Telegraph Company and its subsidiary, Western Electric Company, have used for many years last past (long prior to 1900), and now use, the name "Bell" and the representation of a bell as a mark or brand to designate their service and products, and the Western Electric Company has used for many years last past (long prior to 1931), and now uses the name "Blue Bell" and the representation of a bell as a mark or brand to designate dry cell batteries manufactured and sold by it. Said dry cell batteries can be and are used in radio sets and like products.

The said products and service of said companies so marked and identified by said name "Bell" and said name "Blue Bell" and the representation of a bell, have been for many years last past and are now used in connection with products manufactured, sold, shipped, and

extensively advertised in interstate and foreign commerce by said companies.

The value of said service rendered and said products manufactured, sold, and shipped annually in interstate and foreign commerce by the said companies and their subsidiaries, so marked, amounts to millions of dollars and the said companies spend and have spent large sums of money in advertising their said service and products, so marked, and said names "Bell" and "Blue Bell" and the representation of a bell are of great value.

Neither said Alexander Graham Bell nor the American Telephone & Telegraph Company or its subsidiary, the Western Electric Company, or his or their agents, representatives, successors, or assigns have granted permission to the respondents to use the name "Bell" or the representation of a bell in any manner, nor have they abandoned the use thereof.

(d) "VICTOR." The name Victor refers to and is a part of the name of the Victor Talking Machine Company, and of the RCA Victor Company, a subsidiary of the Radio Corporation of America. The Radio Corporation of America obtained control of the Victor Talking Machine Company on or about March 15, 1929, and the right to the use of the name "Victor." Said Victor Talking Machine Company and said Radio Corporation of America, RCA Victor Company and other subsidiaries of Radio Corporation of America, have used for many years last past, long prior to 1921, and now use the name "Victor" as part of said corporate names and as marks and brands on phonographs, radio sets, and like products, manufactured and sold by said companies in interstate and foreign commerce. The annual sale of said products by said companies amounts to many millions of dollars and said companies have spent and spend millions of dollars annually in advertising said products and said name "Victor"; and said name "Victor" is of great value in the electric, radio, musical, and like industries.

Neither said Victor Talking Machine Company, Radio Corporation of America, or any subsidiaries of said companies or their agents, representatives, successors, or assigns, have granted permission to the respondents to use said name "Victor" in any manner, nor have they abandoned the use thereof.

(e) "BRUNSWICK." The name "Brunswick" was used as part of the name Brunswick-Balke-Collender Company, a large manufacturer of various musical and sound transmitting instruments, including radio sets and combination radio and talking machine sets and like products. Said corporation assigned to Warner Brothers Pictures, Inc., together with other assets, the right to the use of

said name "Brunswick." Said Warner Brothers Pictures, Inc., organized Brunswick Radio Corporation in 1933. Said companies, for many years last past, long prior to 1921, have used and now use the name Brunswick as part of their corporate name and as marks or brands on talking machines, radio sets, and like products. Said companies sell annually millions of dollars worth of said products so marked and spend large sums of money in advertising said name and said products, and said name Brunswick is of great value. The name "Bronswick" used by respondents is a colorable imitation of said name "Brunswick."

Neither said Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., or its subsidiaries or their agents, representatives, successors, and assigns, have ever granted permission to respondents to use said name Brunswick (or Bronswick) in any manner, nor have they abandoned the use thereof.

(f) "MAJESTIC." The name Majestic is a name used by Grigsby-Grunow Company, and has been used for many years (long prior to 1921) as a mark or a brand on radio sets and like products manufactured and sold by said company. Said name "Majestic" is now vested in Frank M. McKey as trustee in bankruptcy for the creditors of said Grigsby-Grunow Company and is an asset of great value. Said Grigsby-Grunow Company sold over 4,000,000 of said radio sets and spent approximately \$25,000,000 in advertising said name "Majestic," and its products so marked.

Neither said Grigsby-Grunow Company nor said Frank M. McKey, its or his agents, representatives, successors, or assigns, have ever granted permission to respondents to use the name "Majestic" in any manner, nor have they abandoned the use thereof.

(g) "RCA." The letters RCA stand for and represent Radio Corporation of America. The letters RSA and RCI used in the electric, radio, sound transmission, and like industries are colorable imitations of the letters RCA. The Radio Corporation of America, individually and through its subsidiaries, among its many activities, manufactures and sells radio sets and like products and conducts a radio service in interstate and foreign commerce. The Radio Corporation of America for many years last past (long prior to 1921), has used, and now uses the letters RCA to designate its said service and the said company, and the products manufactured and sold by said company and its subsidiaries. The said service and products of said Radio Corporation of America and its subsidiaries, manufactured (transacted) and sold annually in interstate and foreign commerce, so marked or designated, amounts to millions of dollars, and said products and service are extensively advertised by said company

and its subsidiaries, and the letters RCA, designating said name and products, are valuable. The Radio Corporation of America or its subsidiaries, agents, representatives, successors, or assigns, have never granted to respondents, permission to use the letters "RCA" or the name "Radio Corporation of America" in any way, nor have they abandoned the use thereof.

(h) "EB." The letters "EB" when used in the radio, electric, and sound transmission fields, and as a mark or brand on radio sets and like products, stand for and represent the surnames of Thomas A. Edison and Alexander Graham Bell. Said names are owned and used by the respective persons, companies, and corporations designated in subparagraphs (a) and (c) of paragraph 8, none of which said individuals, companies, or corporations have ever granted permission to the respondents to use the initials "EB" in any manner.

"GE." The letters "GE" stand for and represent General Electric Company. "GE" (written in script) in a circle with scroll-like interior decorations, is the property of the General Electric Company, and has been and is used and extensively advertised by General Electric Company to designate said company's name and as a mark or brand to designate products, including radio sets, radio tubes, and like products manufactured, sold, and shipped in interstate and foreign commerce by said company. Said company has sold for many years last past (long prior to 1921) and sells millions of dollars worth annually of its said products and extensively advertises said products, including said mark. The letters "EB" (in script) in a circle with scroll-like decorations used by respondents in the radio, electric, sound transmission, and like industries, is a colorable imitation of the letters "GE" in a circle with scroll-like decorations used by General Electric Company.

Said General Electric Company, its agents, representatives, successors, and assigns, have never granted permission to respondents to use said letters or symbols in any manner, nor have they abandoned the use thereof.

Said names, letters, and symbols are the names and designations of well-known and long established individuals, companies, and corporations, and are standard brands and symbols when used as company, corporate, and trade names, and as marks and brands on radio sets, radio tubes, batteries, electrical, and like products, and said products so marked have a fixed and stable value in the trade and industry generally throughout the United States and foreign countries. The purchasing public relies upon said well-known brands, marks, and symbols when used on radio sets, radio tubes, batteries, electrical, and like products and in said industries as indicating high

standard, reliable, and genuine products. The use of such names, letters, and symbols influence the purchase of said products and increase sales. The number of dealers in said products so marked, increase sales value. The said names, letters, and symbols attached to said products have value to the thousands of dealers engaged in the sale and distribution of said standard brand products. The said names, letters, and symbols are valuable to those persons, partnerships, and corporations owning them, and who have used and now use and employ them in commerce.

Because of the popularity of the name "Edison" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Marconi" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Bell" and the representation of a bell, and the service and products bearing this name and symbol, manufactured and sold or furnished by the lawful owners thereof; and because of the popularity of the name "Victor" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Brunswick" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Majestic" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the letters "RCA" and the products bearing these letters, manufactured and sold by the lawful owners thereof; and because of the popularity of the monogram or letters "GE" (in script) in a circle with scroll-like interior decorations, and the products bearing these letters and symbol, manufactured and sold by the lawful owners thereof; the use by respondents of said names, letters, and monograms, and simulations thereof, has led and has the capacity and tendency to lead the public to believe that the products sold by respondents and so marked or identified are the products of said well-known respective companies or interests hereinabove referred to and identified and results in the appropriation by the respondents of the good will of, and an unfair diversion of business from said respective competitor companies and interests, and an unfair diversion of business from other competitors who do not resort to such practices, to the injury of the owners of said marks, letters, and symbols, and of said competitors, and to the prejudice and injury of the public.

PAR. 10. The placing and use of said names, letters, symbols, marks, and brands as set out in paragraph 8 hereof, on radio sets, radio tubes, and like products offered for sale and sold by respondent individuals.

partnerships, corporations, and others, without authority or right, has the capacity and tendency to deceive and deceives the purchasing public and is unfair to and injures competitors who do not resort to such practices. Such misbranding damages and injures the lawful owners thereof and is injurious to the industry and the public.

The purchasing public buying radio sets, radio tubes, and like products, marked or branded with the said well-known names, letters, and symbols are of a common mind or belief, regardless of the selling price or of the source of supply, that said products are manufactured and sold by the lawful owners and users of said names, marks, brands, letters, and symbols, and when said names, marks, brands, letters, and symbols are placed upon radio sets, radio tubes, and like products, such products are accepted as the products of those who have lawfully used and now use such names as marks, brands, letters, and symbols upon like products as set out in paragraph 9 hereof. The name or brand being depended upon, influences the sale of said products.

Members of the purchasing public have purchased radio sets, radio tubes, and like products branded and sold to the trade by respondents and others, which products were imitations of or less than the genuine products, believing them to be genuine products entered in trade by the lawful owners and users of said standard names, and have been deceived in such purchases.

Dealers in radio sets, radio tubes, and like products have been forced to misbrand or place standard brand names and symbols on like products sold by them, that were not genuine, in order to meet competition of respondents and other dealers engaged in manufacturing and selling said misbranded products.

The manufacture, sale, and delivery to retail dealers by respondents of radio sets, radio tubes, and like products, marked and branded with the names, letters, and symbols hereinabove designated of well-known manufacturers and lawful users of said names, marks, brands, and symbols, without authority or consent of the owners and lawful users thereof, places in the hands of dealers and others, to whom said products are sold, the means whereby injury might be and is done to competitors dealing in the genuine products honestly marked. Injury to manufacturers and dealers in the legitimate products is suffered by the sale by respondents of products falsely marked, sold, and shipped in interstate and foreign commerce. Injury to the lawful owners and users of standard brands, names, marks, and symbols is suffered because of the manufacture, sale, and competition of respondents' said products.

PAR. 11. Respondents, in cooperation among themselves and together with others, in the course and conduct of their business of manufac-

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turing, assembling, selling, and shipping said radio sets and like products in interstate and foreign commerce, placed or caused to be placed upon the products, the aforesaid standard brand names, letters, and symbols, by means of name plates, marks, and brands attached to said products and upon the boxes, cartons, or containers in which they were packed and shipped. The said standard names, marks, brands, and symbols were usually displayed in large, bold lettering, easily discernible, while the names of respondents' corporations or business organizations manufacturing and selling said products were in small letters, hardly discernible.

Respondents, in cooperation among themselves and together with other jobbers and dealers throughout the several States of the United States and foreign countries, selling and shipping respondents' said radio sets, radio tubes, and like products in interstate and foreign commerce, advertise said company, corporation, and trade names and said products so marked, in newspapers, magazines, and other bulletins and periodicals circulated through the mails. Said advertisements are so worded as to convey to the mind of the purchasing public the impression that the products so advertised, are the genuine standard makes or brands, contrary to the facts.

CONCLUSION

The aforesaid acts and practices of said respondents, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondents' 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 and the amended and supplemental complaint of the Commission, the answers of the respondents, testimony, and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaints and in opposition thereto, and the brief filed by Carrel F. Rhodes, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said 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, Marconi Radio Corporation, Edison Radio Stores, Inc., Stuart Radio Corporation, their officers, agents, representatives, and employees, and Joseph E. Frank, S. A. Frank, A. M. Frank, and G. Blumenthal, their agents, representatives, and employees operating individually or operating under the trade names, the Perfection Radio Stores, Harvard Radio Stores, and Post Radio Company, or under any other trade name or designation, in connection with the offering for sale or sale in interstate and foreign commerce and in the District of Columbia of radio sets, radio tubes, and like devices, appliances, or products, do hereby cease and desist from:

(1) Representing, directly or indirectly, through advertisements, trade promotion literature, in sales talks, and through corporation, company, or trade names, marks, or brands, or in any other manner whatsoever, that the radio sets, radio tubes, and like devices, appliances, or products manufactured or assembled for or by, and offered for sale or sold by any of said respondents, are the radio sets, radio tubes, appliances, or products manufactured, assembled, and sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Incorporated, American Telephone & Telegraph Company, Western Electric Company, Marconi Wireless Telegraph Company of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Company, or Frank M. McKey, trustee for the creditors of Grigsby-Grunow Company, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships, or corporations.

(2) Representing, directly or indirectly, through the use of the names, "Edison," "Edison-Bell," "Edison Radio Stores, Inc.," "Edison International," "Bell," "Marconi," "Marconi Radio Corporation," "Victor," "Brunswick," "Bronswick," "Majestic," "Radio Corporation of America," "General Electric Company," or through the use of the letters "R. C. A.," "R. S. A.," "R. C. I.," "G. E.," or "E. B.," or through the representation of a bell, alone or in combination or connection with any other word or words or letter or letters, symbol or symbols, that the radio sets, radio tubes, and like devices, appliances, or products manufactured or assembled for or by and sold by any of said respondents are radio sets, radio tubes, devices, appliances, or products manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Incorporated, American Telephone & Telegraph Company, Western Electric Company, Marconi Wireless Telegraph Company of America, Radio Cor-

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poration of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Company or Frank M. McKey, trustee for creditors of Grigsby-Grunow Company, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships, or corporations.

(3) From applying to, attaching to, or causing to be applied or attached to or used on any radio sets, radio tubes, or other devices, appliances, or like products, manufactured or assembled or sold by respondents, escutcheon plates, brands, marks, or other devices, bearing the names or designations "Edison," "Edison Radio Stores, Inc.," "Edison International," "Edison-Bell," "Bell," or the representation of a bell, "Marconi," "Victor," "Brunswick," "Bronswick," "Majestic," "Marconi Radio Corporation," "Radio Corporation of America," "General Electric," or the letters "R. C. A.," "R. S. A.," "R. C. I.," "G. E.," or "E. B.," alone or in combination or conjunction with any other word or words or with any other letter or letters, symbol or symbols, so as to import or imply that the said radio sets, radio tubes, or other devices, appliances, or like products, manufactured or assembled and sold by respondents are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Incorporated, American Telephone & Telegraph Company, Western Electric Company, Marconi Wireless Telegraph Company of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Company or Frank M. McKey, trustee for creditors of Grigsby-Grunow Company, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships, and corporations.

It is further ordered, That said respondents shall within 30 days from notice hereof, file with this Commission a report in writing, stating in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF
**AUTOGRAF TOOTH BRUSH COMPANY, INC., AND HENRY
 L. HUGHES, INC.**

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

Docket 2497. Complaint, July 17, 1935—Decision, July 10, 1936

Where two corporations engaged in the business of assembling, distributing, and selling tooth brushes, and with a community of interest—

Prominently stamped upon imported handles, on which name of country of origin in very faint type was so placed that insertion of necessarily imported bristles inevitably entirely obliterated or effectively obscured said name of origin, and upon the paper boxes in which the tooth brushes, thus assembled, were packed, the words "Made in U. S. A.";

With effect of deceiving and misleading a substantial number of members of purchasing public into false belief that commodity thus sold and offered was made within the United States and of raw materials produced therein, and that handles thereof were there made and of domestic raw materials, and of purchasing same in such belief, and with capacity and tendency thus to mislead members of such public, among whom there exist an active preference for purchase of goods, when available, of domestic raw materials, entirely, and strong antipathy toward purchase of certain tooth brushes and classes of commodities offered for sale in competition with goods entirely of domestic raw materials; and

With result that trade was diverted to them from competitors, among whom there are those who do not import or use imported handles in the assembling of their products or obliterate or obscure name of country of origin through inserting bristles in the assembling thereof; to their substantial injury and prejudice and to that of the public:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. James W. Bevans, of New York City, 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 Henry L. Hughes Co., Inc., and Autograf Tooth Brush Co., Inc., 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, Henry L. Hughes Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. Respondent, Autograf Tooth Brush Co., Inc., is also 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 in New York City in said State. Respondent, Autograf Tooth Brush Co., Inc., is a subsidiary corporation of respondent, Henry L. Hughes Co., Inc., and the said respondent, Henry L. Hughes Co., Inc., now owns and has owned ever since the organization of respondent, Autograf Tooth Brush Co., Inc., all of the capital stock of such corporation. Officers of respondent, Henry L. Hughes Co., Inc., are now and have been since the organization of respondent, Autograf Tooth Brush Co., Inc., officers also of said respondent, Autograf Tooth Brush Co., Inc. Respondent, Autograf Tooth Brush Co., Inc., since its organization has been dominated by respondent, Henry L. Hughes Co., Inc., which latter mentioned respondent has dominated and controlled the business and business policies of said respondent, Autograf Tooth Brush Co., Inc. Both respondents are now and have been since 1918 engaged in the manufacture, among other things, of tooth brushes and in the sale thereof between and among various States of the United States, causing such tooth brushes to be transported from their respective places of business to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been since 1918 a constant current of trade and commerce by both respondents in tooth brushes between and among the various States of the United States. In the course and conduct of their businesses, both respondents are now and have been since 1918 in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tooth brushes between and among the various States of the United States.

PAR. 2. Since the organization of respondent, Autograf Tooth Brush Co., Inc., in 1918, both respondents have sold and still sell, as described in paragraph 1 hereof, tooth brushes designated by them as "Dentrox," upon the handles of which are and have been stamped in plain and legible letters the words "Made in U. S. A." and the additional word "Sterilized." The handles of such tooth brushes were and have been imported from Japan and have had and still have the word "Japan" stamped upon them in a place and in such a manner

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that the subsequent manufacture of such tooth brushes by the insertion of bristles into the handles thereof effectually obscures and obliterates from the vision of purchasers of such brushes the word "Japan." This obscuration and obliteration has been and is done to a degree by which the word "Japan" is discernible and discoverable only through the use of a magnifying glass or through the removal of the bristles.

PAR. 3. The tooth brushes so manufactured, labeled, and sold by respondents are displayed and have been displayed for sale by dealers and are sold to purchasers and users thereof in a container bearing the words "Made in U. S. A.," and such containers bear no words, legends, or symbols to indicate that the handles of such tooth brushes are not made in the United States of America. A substantial number of such purchasers and users have an active preference for merchandise of this nature manufactured wholly in the United States of America.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof corporations, persons, firms, and partnerships who manufacture tooth brushes, the handles of which, and all of which, are made in the United States of America and are so labeled, designated, and branded. There are also among such competitors corporations, partnerships, firms, and individuals who deal in tooth brushes made in Japan and who label and designate such tooth brushes as being made in Japan.

PAR. 5. The acts and practices of respondents as stated in paragraph 2 hereof have the capacity and tendency to and do mislead and deceive, and have misled and deceived dealers in and ultimate purchasers of tooth brushes into the belief that the tooth brushes so labeled, branded, and designated by the respondents are made in the United States of America and to purchase the tooth brushes so labeled by respondents as described in paragraph 2 hereof, in such erroneous belief. Thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 17, 1935, issued and served its complaint in this proceeding upon respondents Autograf Tooth Brush Company, Inc., and Henry L. Hughes, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint was introduced by Alden S. Bradley, attorney for the Commission, before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by James W. Bevans, attorney for the respondents; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry L. Hughes, Inc., is a New York corporation organized under the laws of that State in the year 1918 and has its principal office and place of business in the city of New York, State of New York.

Respondent, Autograf Tooth Brush Company, Inc., is a New York corporation organized under the laws of that State in the year 1923 and has its principal office and place of business in the city of New York, State of New York.

Respondent Autograf Tooth Brush Company, Inc., is a subsidiary of Henry L. Hughes, Inc., a very substantial majority of the stock of the Autograf Company being owned by the Hughes Company. The officers of each of the respondents are the same.

PAR. 2. Respondents and each of them during their entire corporate existence have been engaged in the business of assembling, selling, and distributing tooth brushes to purchasers of the same. In the course and conduct of their business, they have sold, caused to be sold, transported, and caused to be transported, such articles into and through the various States of the United States to the purchasers of the same.

In connection with the assembling of such brushes, respondents annually import approximately 144 gross of tooth brush handles which are in a virtually completed condition, lacking only polishing to be suitable for the insertion of bristles. Substantially all of the handles used by the respondent, in the assemblage as above described, are imported from Japan. Such handles are unsuited for any use other than in the assembling of tooth brushes. Stamped upon such handles, in very faint type, are the letters "Japan." Such letters are, however, stamped in such a place and in such a manner that the subsequent assembling of the tooth brush, by the insertion of bristles necessary to the completed product, must necessarily entirely obliterate or effectually obscure the letters above referred to. Elsewhere upon the handle, respondents stamp or cause to be stamped in prominent and plain letters the words "Made in U. S. A."

The tooth brushes assembled in the manner herein related are packed in paper boxes, or cartons or other packages whereupon appear in bold type the words "Made in U. S. A."

PAR. 3. Respondents now are, and during their entire corporate existence have been, in substantial competition in interstate commerce with other individuals, firms, and corporations who likewise sell, distribute, and transport to purchasers of the same a commodity similar to that vended by the respondent in the manner above related.

Among its competitors, last above-described, are those who do not import or use imported handles in the assembling of tooth brushes vended by them in interstate commerce and who do not, by inserting bristles in the process of assembling, obliterate, or obscure the name of the country of origin.

All of the bristles, as used in tooth brushes, are imported from either China or Russia. None of domestic origin are available.

PAR. 4. The assembling and sale of tooth brushes in the United States is a substantial industry. Approximately twelve concerns assemble and sell in interstate commerce all of the tooth brushes marketed in the United States.

There exists among the members of the purchasing public an active preference for goods and commodities created entirely of domestic raw materials whenever the same are available. There is likewise a strong antipathy toward the purchase of certain classes of commodities, among which are tooth brushes, when any part of such commodity shall have been imported and when the same is offered for sale in competition with goods made entirely from domestic raw materials, whenever the same are procurable.

PAR. 5. The respondents, in the manner aforesaid, represent and imply that the tooth brush so sold and offered for sale is wholly made in

the United States of America; is made of raw materials produced within the United States of America; that the handle thereof is made within the United States of America and of materials produced therein.

A substantial number of the members of the purchasing public are misled and deceived into the false belief that the commodity so sold and offered for sale is manufactured within the United States of America and of raw materials produced therein and that the handle of such brush is manufactured within the said United States of America and of raw materials produced therein, and relying upon such belief have purchased such tooth brushes.

PAR. 6. The acts and practices of the respondents, as above related, have the capacity and tendency to and do, in fact, deceive and mislead members of the purchasing public into the false belief that in purchasing the commodity of the respondent, as described herein, they are purchasing a commodity made entirely from materials of domestic origin.

PAR. 7. In consequence of the acts and practices of the respondent above set forth, trade in tooth brushes was and is diverted to the respondents from competitors in interstate commerce, to the substantial injury and prejudice of such competitors and to the substantial injury and prejudice of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by James W. Bevans, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondents, Henry L. Hughes, Inc., a corporation, and Autograf Tooth Brush Company, Inc., a corporation, their officers, agents, employees, and representatives, in connection with the sale or offering for sale of tooth brushes in interstate commerce do forthwith cease and desist from:

(1) Representing through the medium of labelling, stamping, or imprinting upon the handle of tooth brushes sold or offered for sale, that such tooth brushes were and are made wholly in the United States of America, when in fact they are not.

(2) Representing through the medium of labelling, stamping on, or imprinting upon the handle of tooth brushes sold or offered for sale, that such tooth brushes were and are made in the United States of America when in fact the handles of such tooth brushes have been imported from a foreign country and the name of the country of origin has been effectively obliterated and obscured.

(3) Representing or causing to be represented, by imprinting upon the boxes, cartons, or other packages wherein tooth brushes are placed prior to the sale or offering for sale of the same, the words "Made in U. S. A.," or other words of similar import and meaning, that the same were made in the United States of America when the handles of such tooth brushes have been imported from some foreign country.

It is further ordered, That the respondents Henry L. Hughes, Inc., a corporation, and Autograf Tooth Brush Company, Inc., a corporation, and each of them, shall within 60 days after 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 shall have complied with this order.

Syllabus

IN THE MATTER OF

SANDERSON ADJUSTMENT BUREAU, INC., AND H. J. SULLIVAN, INDIVIDUALLY AND AS PRESIDENT AND TREASURER THEREOF

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

Docket 2597. Complaint, Oct. 24, 1935—Decision, July 10, 1936

Where a corporation and an individual, its president and treasurer, engaged in sale of collection systems through agents solicited and supplied with reference letters, property of its founder and use of which, outside said corporation's city, was unauthorized following said founder's sale of his stock therein, as was subsequent use of his said collection system in question; in carrying on said business through agents whom they (1) contacted by advertising in financial and business opportunity columns of the daily papers as an old established concern, offering an opportunity to make \$500 a month the year round, and seeking men with capital to invest to act as district managers, branch managers, or other representatives, and (2) purported to employ as such, and with whom they (3) entered or sought to enter into agreements whereby, thus employed, they were ostensibly assigned specified exclusive territories and were required to obligate themselves to buy a designated number of such systems, varying according to particular applicant's capital, and at a specified price, and to resell same at a rate likewise fixed, and with guarantee that if money collected by purchaser did not equal 10 times original cost of system, full price was to be refunded by it, and whereby it further undertook to (1) spend in local periodical and newspaper advertising 5 percent of amount invested by applicants as district managers, etc., and (2) to assist them in making field productive by sending traveling representatives or supervisors, experienced in recruiting salesmen, to spend a minimum of 3 days a month with such district managers, and to devote their entire efforts to developing a sales organization for such systems, but subject to provision that district managers, etc., must have placed initial orders and ordered 150 systems a month for 3 months, and (3) to refund sum paid by them, contingent, however, upon compliance with instructions of agreement and demand within 3 months of date of sale and furnishing of conclusive evidence of strict compliance with said instructions of agreement, limited by language thereof to written representations therein contained—

- (a) Represented to applicants, contacted as aforesaid, that it was an old, established, Atlanta corporation and afforded an opportunity to make earnings in excess of \$500 a month the year round, and that it was an old established concern of high integrity and standing, engaged in sale of collection systems in great demand, and that it offered rare opportunities for exceptional earnings and permanently high paid connections to those who agreed to represent it, and had men earning \$500 a week, and that reliable men, with managerial ability and from \$400 to \$1,000 to invest, should earn in excess of \$500 and up to \$1,500 a month, the year round, in sale of said systems, and that minimum earnings for agent should be \$50 a week;

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- Facts being it had been thus engaged for less than 2 years and was relatively small and unknown, demand for said systems on the part of the business public was very limited, and its district managers or other representatives had not realized the enormous profits or earnings thus represented;
- (b) Falsely, misleadingly, and deceptively represented, as aforesaid, that it assigned exclusive, unworked territory to its representatives where they were free from competition in sale of its said systems, and would give assistance in working such territory where the representative had placed his initial order and had ordered 150 systems a month for 3 months;
 - (c) Falsely, misleadingly, and deceptively represented, as aforesaid, that two nationally known industrial institutions and other large, well-recognized companies used said collection systems with success and had furnished it with testimonial letters bearing out such claim, and that it would furnish such letters to its agents for their aid in selling said systems;
 - (d) Falsely, misleadingly, and deceptively furnished its agent with letters of recommendation belonging to its aforesaid founder, as above set forth, and represented that the same were its property and referred to the collection systems and service offered by it; and
 - (e) Falsely, misleadingly, and deceptively represented to its agents that it would refund to them the amount invested by them upon demand in 90 days if said systems proved unsalable or unworkable;

With effect of misleading and deceiving general public and particularly those applying for positions as district managers, etc., in response to said advertisements, into belief that it was an old, established firm, engaged with substantial capital in sale and distribution of collection systems for which there was a great demand, and that its district managers, etc., had made enormous profits and earnings from sale thereof, and that any man of good character, without experience, through investment of small amounts of capital in the business, might make enormous profits or earnings in a short period of time, and that said systems had been successfully used by a large number of well-recognized, reputable firms and that the references therefrom were its property and would be furnished to applicants for their assistance in sale of said systems, and that they would be given exclusive territories without competition, and their investment would be refunded upon return of such systems if they were unable to dispose thereof, and into purchasing and entering into agreements for purchase of such systems from it in such beliefs, and with tendency and capacity thus to mislead and deceive, and to divert trade to it from competitors engaged in sale in commerce of collection systems:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Reuben J. Martin, *Mr. Everett F. Haycraft* and *Mr. Alden S. Bradley* 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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Sanderson Adjustment Bureau, Inc., hereinafter referred to as respondent Bureau, and H. J. Sullivan, its president and treasurer, hereinafter referred to as respondent Sullivan, 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 Bureau is a corporation organized on or about October 10, 1932, by one F. R. Sanderson, under the laws of the State of Georgia, with an authorized capitalization of \$5,000 divided into shares of par value of \$100 each, and with its principal office and place of business in the city of Atlanta in said State. Said respondent Bureau, in its original charter, was granted the following enumerated powers: "Buying, selling, and collecting accounts, notes, judgments, and other evidences of indebtedness; acquiring by purchase or assignment stocks of merchandise and choses in action for sale and distribution; to acquire by purchase, gift, or otherwise, or sell, encumber, and deal in both real and personal property." Said respondent Bureau, at the time it was originally organized, and for a period of more than a year thereafter, conducted a business of operating a collection agency in the city of Atlanta, Ga. On or about March 15, 1934, when said respondent Sullivan was first employed by the said respondent Bureau as manager, said respondent Bureau began to conduct a business of selling a "collection system" consisting of a group of form collection letters, originally compiled by said Sanderson, bound in book form ostensibly for the use of merchants, professional men, and others in collecting unpaid accounts, said business being conducted under the trade name of "Creditors Protective Service," as a division of said respondent Bureau. Said respondent Bureau caused said collection systems, in book form, when sold, to be transported in interstate commerce from the city of Atlanta in the State of Georgia, to the purchasers thereof located in States other than the State of Georgia.

PAR. 2. Said F. R. Sanderson, the organizer of respondent Bureau, has for more than 22 years been engaged in the business of selling to merchants throughout the several States of the United States a collection system known as the "Honor System," consisting of a group of form collection letters compiled by him ostensibly for the use of the purchasers thereof, and at the time he sold his stock in the said respondent Bureau on or about June 7, 1933, said Sanderson

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retained for himself the right to conduct his said business outside of the city of Atlanta, Ga., under the trade name "Sanderson Adjustment Bureau," and since that date said Sanderson has continued in said business under said trade name. In the course and conduct of his said business, said Sanderson utilized and employed a portfolio of reference letters consisting of letters of reference from satisfied customers in various parts of the country, which were his personal property, and contained testimonials of satisfied purchasers of the collection systems which he had theretofore sold.

PAR. 3. Said respondent Bureau, at the instance of and in cooperation with said respondent Sullivan, in the course and conduct of its said business relating to the interstate sale of a collection system under the trade name, Creditors Protective Service, as a division of said respondent Bureau, has appropriated the form collection letters, which it had been allowed to use in its collection business in the city of Atlanta in the State of Georgia by the said Sanderson, and also has appropriated and made use of said portfolio of reference letters, the property of said Sanderson, without the permission of said Sanderson, in the solicitation of purchasers of said system, and has furnished said portfolio of reference letters to its agents to be used by them in the solicitation of business from their customers and prospective customers.

PAR. 4. Said respondent Bureau, in the course and conduct of its said business of selling collection systems, as aforesaid, is now, and for more than 1 year last past, has been in competition in interstate commerce between and among the various States of the United States and the District of Columbia with various other individuals, and with corporations and copartnerships engaged in the sale and distribution of similar collection systems.

PAR. 5. Said respondent Bureau, since March 1934, at the instance of and with the cooperation of said respondent Sullivan, in the course and conduct of its said business of selling collection systems in interstate commerce, as aforesaid, has adopted a policy of advertising in the financial and business opportunity columns of daily newspapers for men with capital to invest to act as "District Managers," "Branch Managers," or other representatives, using in said advertisements false, misleading, and deceptive statements (*a*) as to the size of said respondent Bureau; (*b*) as to the length of its establishment; (*c*) as to the equipment and cooperation furnished by respondent Bureau; (*d*) as to the opportunities offered; and (*e*) the possible or probable earnings or profits to be derived from the business operated and the money invested therein.

PAR. 6. Said respondent Bureau, since March 1934, at the instance of and with the cooperation of said respondent Sullivan, in the course and conduct of its said business of selling collection systems in interstate commerce, as aforesaid, has adopted the policy of entering into agreements, or seeking to enter into agreements, with the individuals who apply for positions with said respondent Bureau as a result of the advertisements inserted in daily newspapers by said respondent Bureau, as set forth in paragraph 5 herein, whereby said respondent Bureau purports to employ said applicants as district managers, branch managers, or other representatives, for the "Creditors Protective Service" division of said respondent Bureau in certain specified exclusive territories, and in consideration for such appointment the said applicants are required to purchase from respondent Bureau a designated number of said collection systems, varying in number with the amount of capital said applicants have to invest, and also agree to purchase from the said Bureau a designated number of said collection systems per month at a specified price, usually \$7.50 per system, with the understanding that the said applicants, as district managers, branch managers, or other representatives, shall sell said collection systems at a specified rate, usually \$15.00 per system, on a guaranteed basis of 10 times the cost per system; with the understanding that if after using said system according to instructions the moneys collected by the purchaser from the usage thereof do not equal the amount of 10 times the original cost of the system, the full price thereof shall be refunded by the company, with the further agreement on the part of the respondent Bureau that it will expend in newspaper advertising in local papers or magazines a sum equal to 5 percent of the money invested in said systems by said applicants as district managers, branch managers, or other representatives, and will assist them in making the field productive by sending traveling representatives or supervisors experienced in recruiting salesmen, said representatives to spend a minimum of 3 days per month with the said district managers, devoting their entire efforts in developing an organization to procure sales for said systems, provided that the district managers, branch managers, or other representatives, shall have placed their initial orders and shall have ordered 150 systems per month each for a period of 3 months, with the further agreement to refund the sum paid by the said district managers, branch managers, or other representatives, for the initial purchase of said collection systems, but only after the said applicants, as district managers, branch managers, or other representatives, shall have complied with the full instructions in the said agreement and if demand is made within 3 months of the date of the sale and conclusive evidence has been furnished that the

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instructions contained in the agreement have been strictly complied with; and with the further understanding and agreement that the written instrument signed by both parties contained the complete agreement between the parties, and that no oral representations had been made by the representative of the said respondent Bureau other than those embodied therein, to induce the entering into of the agreement by the said district managers, branch managers, or other representatives, and that neither the company nor its agents are answerable to the said district managers, branch managers, or other representatives, except as therein provided.

PAR. 7. Said respondent Bureau, since March 1934, at the instance of and with the cooperation of said respondent Sullivan, in the course and conduct of its said business of selling collection systems in interstate commerce, as aforesaid, in order to induce said applicants, who answer advertisements of said respondent Bureau, as described in paragraph 5 herein, to enter into said agreements and to purchase said collection systems from said respondent Bureau, as set forth in paragraph 6 herein, has used and is now using false, misleading, and deceptive statements—

- (a) as to the financial standing of said respondent Bureau;
- (b) as to the length of its establishment;
- (c) as to the demand for said collection systems;
- (d) as to the cooperation to be furnished by said respondent Bureau;
- (e) as to the possible or probable earnings or profits to be derived from the business operated and the money to be invested therein;
- (f) as to the profits or earnings realized by district managers, branch managers, or other representatives of said respondent Bureau;
- (g) as to the success of said collection systems in collecting overdue accounts;
- (h) as to competitive conditions in territories to be assigned to said applicants;
- (i) as to the source and ownership of the portfolio of reference letters to be furnished said applicants to assist them in the resale of said collection systems, and
- (j) as to many other important facts relating to the business being operated by said respondent Bureau.

PAR. 8. The aforesaid acts and things done and performed by said respondent Bureau, in cooperation with said respondent Sullivan, have the tendency and capacity to mislead and deceive the general public, and particularly the said applicants who apply for positions as district managers, branch managers, or other representatives of said respondent, in response to said advertisements, as set forth in

paragraph 5 herein, into the belief that said respondent Bureau is an old established firm engaged in the sale and distribution of collection systems, with substantial capital; that there is a great demand for said collection systems; that district managers, branch managers, and other representatives of said respondent Bureau, have made enormous profits and earnings in the sale of collection systems; that any man of good character, without experience, by the investment of a small amount of capital in said business, may make enormous profits or earnings in a short period of time; that the said collection systems had been utilized by a large number of well recognized, responsible firms with success, and letters of reference from such firms were the property of said respondent Bureau and would be furnished said applicants or prospective district managers, branch managers, or other representatives, to assist them in selling said collection systems; that said applicants would be given exclusive territories where they would have no competition in the sale of said collection systems, and that the money invested by said applicants or prospective district managers, branch managers, or other representatives, would be refunded upon the return of said collection systems purchased by them if said applicants or prospective district managers, branch managers, or other representatives, were unable to dispose of said collection systems; and in said belief said applicants have been and are induced to purchase, and to enter into agreements to purchase, the said collection systems from said respondent Bureau.

The truth and fact is that said respondent Bureau has been engaged in the sale of collection systems for less than 2 years and is a relatively small and unknown corporation; that there is a very limited demand for said collection systems on the part of the business public; that the collection systems offered for sale by said respondent Bureau were originally compiled, edited, and copyrighted by said F. R. Sanderson, who had sold for a number of years and now sells said collection systems under the name "Honor System"; that the portfolio of letters of reference used by said respondent Bureau in the solicitation of the sale of its said collection systems, and which it agreed to furnish said prospective district managers, branch managers, or other representatives, to assist them in the sale of said collection systems, as aforesaid, was the sole property of said F. R. Sanderson, and said respondent Bureau had no right to use said portfolio in any manner whatsoever; that there is keen competition in the sale of collection systems; that the district managers, branch managers, or other representatives of the said respondent Bureau, have not realized the enormous profits or earnings represented by said respondent Bureau, as aforesaid; and that the said respondent Bureau has not refunded and does not now

refund the purchase price of said collection systems which said applicants, as district managers, branch managers, or other representatives, were unable to sell, and which were returned to the said respondent Bureau.

PAR. 9. The aforesaid acts and things done and performed by said respondent Bureau, in cooperation with said respondent Sullivan, as aforesaid, have the tendency and capacity to divert trade to said respondent Bureau from its said competitors engaged in the sale of collection systems in interstate commerce.

PAR. 10. The aforesaid acts and things done and performed by said respondent Bureau, in cooperation with said respondent Sullivan, as aforesaid, are to the prejudice of the public and the respondents' competitors, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, and 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 24th day of October A. D. 1935, issued and served its complaint in this proceeding upon the respondent, Sanderson Adjustment Bureau, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. No service of the said complaint was ever had or obtained against the respondent, H. J. Sullivan. After the issuance of said complaint said respondent, Sanderson Adjustment Bureau, Inc., filed its answer thereto. Thereafter testimony and evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, Everett F. Haycraft and A. S. Bradley, attorneys for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer of the respondent, Sanderson Adjustment Bureau, Inc., thereto, and the testimony and evidence; and the Commission, having duly considered same and being duly 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, Sanderson Adjustment Bureau, Inc., is a corporation organized on or about October 10, 1932, by one F. R. Sanderson under the laws of the State of Georgia, with an authorized capital of \$5,000 divided into shares of par value of \$100 each, and with its principal office and place of business in the city of Atlanta within said State. Said respondent, Sanderson Adjustment Bureau, Inc., was in its original charter granted the following enumerated powers: "buying, selling, and collecting accounts, notes, judgments, and other evidences of indebtedness; acquiring by purchase or assignment stocks of merchandise and choses in action for sale and distribution; to acquire by purchase, gift, or otherwise, or sell, encumber, and deal in both real and personal property." Said respondent, Sanderson Adjustment Bureau, Inc., at the time it was originally organized, and for a period of more than a year thereafter, operated a collection agency in the city of Atlanta, Ga. On or about March 15, 1934, said respondent, H. J. Sullivan, was first employed by the said respondent, Sanderson Adjustment Bureau, Inc., as manager, and said respondent, Sanderson Adjustment Bureau, Inc., began to conduct the business of selling a "collection system" consisting of a group of form collection letters, originally compiled by the said F. R. Sanderson, bound in book form for the use of merchants, professional men, and others in collecting unpaid accounts. Said business was conducted under the trade name of "Creditors Protective Service" as a division of said respondent, Sanderson Adjustment Bureau, Inc. Said respondent, Sanderson Adjustment Bureau, Inc., caused said collection systems in book form, when sold, to be transported in interstate commerce from the city of Atlanta in the State of Georgia to the purchasers thereof located in States other than the State of Georgia.

PAR. 2. Said F. R. Sanderson, the organizer of said corporate respondent, Sanderson Adjustment Bureau, Inc., has for more than 22 years been engaged in the business of selling to merchants through the several States of the United States a collection system known as the "Honor System" which consists of a group of form collection letters compiled by him for the use of the purchasers thereof. Said F. R. Sanderson, on or about June 7, 1933, sold his capital stock in said respondent, Sanderson Adjustment Bureau, Inc., and reserved and retained for himself the right to conduct his said business outside of the city of Atlanta, Ga., under the trade name "Sanderson Adjustment Bureau," and since that date said F. R. Sanderson has continued in said business under the said trade name. In the course

and conduct of his said business said F. R. Sanderson used and employed a portfolio of reference letters consisting of letters of reference from satisfied customers in various parts of the country. Said reference letters were the personal property of said F. R. Sanderson and contained testimonials of satisfied purchasers of the collection systems which he had theretofore sold.

PAR. 3. Said respondent, Sanderson Adjustment Bureau, Inc., in cooperation with said respondent, H. J. Sullivan, in the course and conduct of its said business relating to the interstate sale of the collection systems under the trade name "Creditors Protective Service" as a division of said respondent, Sanderson Adjustment Bureau, Inc., appropriated the form collection letters which it had been allowed to use in its collection business in the city of Atlanta in the State of Georgia by the said F. R. Sanderson, and also appropriated and made use of said portfolio of reference letters which was the property of said F. R. Sanderson without the permission of said F. R. Sanderson in the solicitation of purchasers of said collection systems outside of the city of Atlanta in the State of Georgia and in various cities in States other than the State of Georgia; and furnished said portfolio of reference letters to its agents to be used by them in the solicitation of business from their customers and prospective customers, located in States other than the State of Georgia.

PAR. 4. Said respondent, Sanderson Adjustment Bureau, Inc., in the course and conduct of its business of selling collection systems, is now and for more than 1 year last past has been in competition in interstate commerce between and among the various States of the United States and the District of Columbia with various other individuals and with corporations and copartnerships engaged in the sale and distribution of similar collection systems.

PAR. 5. In cooperation with said respondent, H. J. Sullivan, said respondent, Sanderson Adjustment Bureau, Inc., has since March 1934, in the course and conduct of its business of selling collection systems in interstate commerce, adopted a policy of advertising in the financial and business opportunity columns of daily newspapers for men with capital to invest to act as district managers, branch managers, or other representatives, and used in said advertisements the following false, misleading, and deceptive statements: (a) that it was an old established Atlanta corporation, and (b) that it offered an opportunity to make earnings in excess of \$500 a month for the year round.

PAR. 6. With the cooperation of said respondent, H. J. Sullivan, said respondent, Sanderson Adjustment Bureau, Inc., has since March 1934, in the course and conduct of its business of selling collection

systems in interstate commerce, entered into agreements or sought to enter into agreements with the individuals who apply for positions with said respondent, Sanderson Adjustment Bureau, Inc., as a result of the advertisements inserted in daily newspapers by said respondent, Sanderson Adjustment Bureau, Inc., as set forth in paragraph 5 herein, whereby said respondent, Sanderson Adjustment Bureau, Inc., purports to employ said applicants as district managers, branch managers, or other representatives for the "Creditors Protective Service" division of said respondent, Sanderson Adjustment Bureau, Inc., in certain specified exclusive territories, and in consideration for such agreement the applicants are required to purchase from said respondent, Sanderson Adjustment Bureau, Inc., a designated number of said collection systems which number varies according to the amount of capital said applicants have to invest, and also agree to purchase from the said respondent, Sanderson Adjustment Bureau, Inc., a designated number of said collection systems per month at a specified price, usually \$7.50 per system, with the understanding that the said applicants as such district managers, branch managers, or other representatives shall sell said collection systems at a specified rate, usually \$15.00 per system, on a guarantee basis that it will return 10 times the cost per system; with the understanding that if, after using the said system according to instructions, the monies collected by the purchaser from the usage thereof do not equal the amount of 10 times the original cost of the system, the full price thereof shall be refunded by the said Sanderson Adjustment Bureau, Inc. The said contracts further provide that respondent, Sanderson Adjustment Bureau, Inc., will spend in local magazine or newspaper advertising a sum equal to 5 percent of the money invested in said systems by said applicants as district managers, branch managers, or other representatives, and will assist them in making the field productive by sending traveling representatives or supervisors experienced in recruiting salesmen to spend a minimum of 3 days per month with the said district managers, and devote their entire efforts in developing a sales organization for said systems provided that the district managers, branch managers, or other representatives shall have placed their initial orders and shall have ordered 150 systems per month each for a period of 3 months. The said agreements further provide that said respondent, Sanderson Adjustment Bureau, Inc., will refund the sum paid by said district managers, branch managers, or other representatives for the initial purchase of said collection systems, but only if the said applicants as district managers, branch managers, or other representatives shall have complied with the instructions in the said agreement, and shall make demand for same within 3 months of the date of sale and

furnish conclusive evidence that they have strictly complied with the instructions contained in the agreement. The said contracts also provide that the written instrument signed by both parties contain the complete agreement between the parties and that no oral representations had been made by the representative of the said respondent, Sanderson Adjustment Bureau, Inc., other than those set forth therein to induce the said district managers, branch managers, or other representatives to enter into the agreement, and that neither the said respondent, Sanderson Adjustment Bureau, Inc., nor its agents are answerable to the said district managers, branch managers, or other representatives except as provided in said contracts.

PAR. 7. Said respondent, Sanderson Adjustment Bureau, Inc., in cooperation with the respondent, H. J. Sullivan, since March 1934, in the course and conduct of its said business of selling collection systems in interstate commerce has, in order to induce said applicants who answer advertisements of said respondent, Sanderson Adjustment Bureau, Inc., as described in paragraph 5 herein, to enter into said agreements and to purchase said collection systems from said respondent, Sanderson Adjustment Bureau, Inc., as set forth in paragraph 6 herein, used and is now using false, misleading, and deceptive statements as follows: (a) That respondent, Sanderson Adjustment Bureau, Inc., was an old established concern of high integrity and standing engaged in the sale of collection systems that are in great demand, offering rare opportunities for exceptional earnings and permanently high paid connections to those who agree to represent it; (b) that the Bureau has men earning \$500 per week, and reliable men with managerial ability and from \$400 to \$1,000 to invest should earn in excess of \$500 and up to \$1,500 monthly the year round in the sale of said systems; earnings of \$50 per week should be the minimum for the agent; (c) that the Sanderson Adjustment Bureau, Inc., assigns exclusive unworked territory to the representative where he is free from competition in the sale of said systems, and will give assistance in working this territory where the representative shall have placed his initial order and shall have ordered 150 systems per month for a period of 3 months; (d) that Sears, Roebuck & Co., Goodyear Tire & Rubber Co., Inc., and a large number of well-recognized companies use these systems with success and have furnished the said respondent Sanderson Adjustment Bureau, Inc., with testimonial letters bearing out this claim, and that the said respondent will furnish portfolios of these letters to the representatives to aid them in selling said systems; (e) that said respondent, Sanderson Adjustment Bureau, Inc., would refund the

amount invested in each system by its representatives upon demand in 90 days if the systems proved unsalable or unworkable.

PAR. 8. The aforesaid acts and things done and performed by said respondent, Sanderson Adjustment Bureau, Inc., in cooperation with respondent, H. J. Sullivan, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the general public and particularly those applicants who apply for positions as district managers, branch managers, and other representatives of said respondent, Sanderson Adjustment Bureau, Inc., in response to said advertisements, as set forth in paragraph 5 herein, into the belief that said respondent, Sanderson Adjustment Bureau, Inc., is an old established firm engaged in the sale and distribution of collection systems with substantial capital; that there is a great demand for said collection systems; that district managers, branch managers, and other representatives of respondent, Sanderson Adjustment Bureau, Inc., have made enormous profits and earnings in the sale of collection systems; that any man of good character, without experience, by the investment of small amounts of capital in said business may make enormous profits or earnings in a short period of time; that said collection systems have been used by a large number of well-recognized reputable firms with success, and that the references from such firms were the property of said respondent, Sanderson Adjustment Bureau, Inc., and would be furnished to said applicants or prospective district managers, branch managers, or other representatives to assist them in selling said collection systems; that said applicants would be given exclusive territories where they would have no competition in the sale of said collection systems; and that the money invested by said applicants, or prospective district managers, branch managers, or other representatives would be refunded upon the return of said collection systems purchased by them if said applicants, or prospective district managers, branch managers, or other representatives were unable to dispose of said collection systems, and in said belief said applicants have been and are induced to purchase and to enter into agreements to purchase the said collection systems from said respondent, Sanderson Adjustment Bureau, Inc.

In truth and in fact said respondent, Sanderson Adjustment Bureau, Inc., has been engaged in the sale of collection systems for less than 2 years, and is a relatively small and unknown corporation; there is a very limited demand for said collection systems on the part of the business public; the collection systems offered for sale by said respondent, Sanderson Adjustment Bureau, Inc., were originally compiled, edited, and copyrighted by F. R. Sanderson, who has sold for a number of years and now sells said collection systems under

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the name "Honor System"; the portfolio of letters of reference used by said respondent, Sanderson Adjustment Bureau, Inc., in soliciting the sale of its said collection systems, and which it agreed to furnish to prospective district managers, branch managers, and other representatives to assist them in the sale of said collection systems as aforesaid, was and is the sole property of F. R. Sanderson, and said respondent, Sanderson Adjustment Bureau, Inc., had no right to use said portfolio in any manner whatsoever; there is keen competition in the sale of collection systems; the district managers, branch managers, or other representatives of said respondent, Sanderson Adjustment Bureau, Inc., have not realized the enormous profit or earnings which the said respondent, Sanderson Adjustment Bureau, Inc., represented they had earned, as aforesaid; and said respondent, Sanderson Adjustment Bureau, Inc., has not refunded and does not now refund the purchase price of said collection systems which said applicants as district managers, branch managers, or other representatives were unable to sell and which were returned to the said respondent, Sanderson Adjustment Bureau, Inc.

PAR. 9. The acts and things done and performed by said respondent, Sanderson Adjustment Bureau, Inc., as aforesaid, have the tendency and capacity to divert trade to said respondent, Sanderson Adjustment Bureau, Inc., from its said competitors engaged in the sale of collection systems in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, Sanderson Adjustment Bureau, Inc., no service having been obtained on the respondent II. J. Sullivan, and no answer having been filed by said II. J. Sullivan, and on the testimony and evidence taken before John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said

complaint, no testimony or evidence having been introduced in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that said respondent, Sanderson Adjustment Bureau, 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 ordered, That the complaint herein be and the same is hereby dismissed as to the respondent, H. J. Sullivan, there having been no service of said complaint upon said respondent, H. J. Sullivan.

It is further ordered, That the respondent, Sanderson Adjustment Bureau, Inc., its officers, representatives, agents, employees, and successors, in connection with the offering for sale and sale of collection systems in interstate commerce do forthwith cease and desist from:

1. Representing in its advertisements in newspapers or otherwise that said respondent, Sanderson Adjustment Bureau, Inc., is an old established Atlanta corporation and that it affords an opportunity to make earnings in excess of \$500 a month for the year round;

2. Representing that respondent, Sanderson Adjustment Bureau, Inc., is an old established concern of high integrity and standing engaged in the sale of collection systems that are in great demand, and offer rare opportunities for exceptional earnings and permanently high paid connections to those who agree to represent it;

3. Representing that respondent, Sanderson Adjustment Bureau, Inc., has men earning \$500 per week and reliable men with managerial ability and from \$400 to \$1,000 to invest should earn in excess of \$500 and up to \$1,500 monthly the year round in the sale of said systems and the minimum earnings for the agent should be \$50 per week.

4. Representing that respondent, Sanderson Adjustment Bureau, Inc., assigns exclusive unworked territory to its representatives where they are free from competition in the sale of said systems, and will give assistance in working said territory where the representative shall have placed his initial order and shall have ordered 150 systems per month for a period of 3 months.

5. Representing that Sears, Roebuck & Co., Goodyear Tire & Rubber Co., Inc., and other large well-recognized companies use the collection systems of Sanderson Adjustment Bureau, Inc., with success and have furnished said Sanderson Adjustment Bureau, Inc., with testimonial letters bearing out this claim, and that said respondent, Sanderson Adjustment Bureau, Inc., will furnish these letters to its agents to aid them in selling its collection systems;

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6. Furnishing to its agents letters of recommendation belonging to Frank R. Sanderson and representing that said letters are the property of and refer to the collection systems and service offered by Sanderson Adjustment Bureau, Inc.;

7. Representing to its agents that Sanderson Adjustment Bureau, Inc. will refund to said agents the amount invested in each collection system by said agents upon demand in 90 days if the said collection systems prove unsalable or unworkable.

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

Complaint

IN THE MATTER OF

SAM FISHER, TRADING AS HOLLYWOOD SHIRT
COMPANY

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

Docket 2583. Complaint, Oct. 16, 1935—Decision, July 11, 1936

Where an individual engaged in the sale of shirts at retail and by mail order, chiefly, with some 1,500 or 2,000 agents soliciting orders in response to which merchandise was shipped; in advertising his said merchandise and soliciting agents in newspapers and trade periodicals in competition with others similarly engaged—

- (a) Represented, in advertisements and circulars sent to prospective agents and purchasers, that his said shirts were made of the "finest sanforized lustrous broadcloth" and offered as a "sales leader" a particular shirt for 57 cents as made from first quality genuine broadcloth, notwithstanding fact lowest construction of "single" broadcloth is 108 warp yarns per inch and 60 filling yarns, while construction of particular cloth thus advertised was 104 warp yarns and 58 filling yarns;
- (b) Employed word "manufacturer" in said advertising and stressed fact that shirts were being sold "directly from manufacturer to wearer," and that there were no middleman's profits, and shirts had not passed through many hands, and that because of the direct transaction of shipping said articles from manufacturer to wearer money saved would inure to the benefit of the ultimate consumer, facts being he neither owned nor was interested in any way in a shirt factory, but purchased his said products from independent manufacturer thereof and filled orders from the stock thus purchased as they came in, and there was included not only wholesaler's profit but agent's commission, and the direct to wearer savings claims were untrue;

With tendency and capacity to divert business from competitors who truthfully advertise their products:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. William L. Pencke 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 Sam Fisher, an individual trading as Hollywood Shirt Co., hereinafter referred to as the respondent, has been and is using unfair

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methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sam Fisher, is an individual trading as Hollywood Shirt Co., with his principal place of business located at No. 8 Allen Street, in the city of New York, in the State of New York. Respondent is now, and for a considerable time immediately heretofore has been, engaged in the selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, manufactured products described as broadcloth shirts, in the course and conduct of which said respondent has caused and causes its said shirt products, when sold, to be transported from his place of business in the city of New York, in the State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and to purchasers in the District of Columbia, and in the course and conduct of which business the said respondent has been, and is now, engaged in substantial competition with corporations, firms, partnerships, and other individuals engaged in like commerce.

PAR. 2. Respondent has offered for sale and now offers for sale his shirt products in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, by use of interstate carriers and other channels of interstate commerce, by means of advertising in newspapers and other periodicals and advertising literature which have and have had a circulation in and through the various States of the United States and the District of Columbia, and by means of agents and solicitors taking purchase orders for delivery of shirts in and among the various States of the United States and in the District of Columbia, in the course and conduct of which said respondent has made, and now makes, false and misleading statements and representations, to the injury of the public and to the injury of respondent's competitors.

PAR. 3. In the course and conduct of the business of the said respondent, as aforesaid, and in the course of the advertising and promotion of said business, as aforesaid, respondent has made and now makes the following statements and representations, among others, to wit:

Broadcloth
SELL SHIRTS AT 57¢

Don't lose sales because of high phane wrapped shirts! This is not a prices. Now you can actually quote wholesale price but INCLUDES your a RETAIL price of as low as 57¢ for commission! Sensational low prices on first quality, genuine broadcloth Cello- quality shirts, including finest Sanfor-

ized lustrous broadcloth will swamp you with orders. Just show complete kit furnished you free, write orders, pocket liberal advance cash commission. We deliver direct to customer on absolute money-back guarantee. Hollywood shirts will be replaced or money refunded even months after wearing if not 100% satisfactory. Write today for your free outfit.

FREE OUTFIT

No investment or experience required. Pay no money. No red tape or delays. A postal card will bring you sample-shirt fabrics, order books and full instructions. We have no circulars or bunk to send you. If you want to make real money write quick before supply of outfits is gone.

HOLLYWOOD SHIRT COMPANY

Dept. F.

8 Allen St.,

New York.

If you could see how our shirts are cut and how up to 30 yards of cloth is used in cutting one dozen whereas on cheap shirts as little as 24 yards could be used. We repeat, if you actually knew all these things as matters of fact, then you would really have the enthusiasm and confidence that a salesman must have in his product in order to successfully sell it.

The customer buys direct. Shirts have NOT passed through many hands, have not been on shelves for many months. They are shipped direct from manufacturer to wearer. Length of time from actual production to delivery is a matter of days instead of months and even years. Time will spoil wearing apparel even if not worn.

In buying from you, there is only One commission included in the price, your own commission. There are no profits or expenses taken out for retail stores and jobbers. The result, naturally, is better value. A man does not wear expenses and profits. He wears shirts. If more of his money goes into the actual making of the shirts, he is careful in buying, they make sure they get the most for the money. They even employ high salaried buyers just to make sure they buy right. Why shouldn't an individual buy his personal needs that way? Why not get a better shirt for the same money or a similar shirt for less money?

We do not sacrifice quality for the sake of a few cents difference in price. On the other hand, most shirts sold to stores are sold on a price basis.

PAR. 4. In the course and conduct of the business of the said respondent, as aforesaid, and in the advertising, promotion, selling, and distribution of said product, as aforesaid, respondent has falsely and misleadingly stated, and now falsely and misleadingly states and represents that the shirts offered and sold by said respondent, as aforesaid, are: First quality broadcloth; genuine broadcloth; the finest broadcloth; Sanforized broadcloth; lustrous broadcloth; broadcloth: That the respondent is the manufacturer of the shirts which he sells; that there is but one middle profit between manufacturer and wearer; that respondent's shirts will be replaced or money refunded "even months after wearing" if not 100 percent satisfactory; that said shirts contain the equivalent of 25 percent more yardage than other shirts of similar price; that in respondent's shirts one gets either "a better shirt for the same money," or "a similar shirt

- for less money"; that respondent does not sacrifice quality for price; that "most shirts sold to stores are sold on a price basis," and that stores and agents selling respondent's shirts are afforded large profit possibilities by selling respondent's shirts; whereas, in truth and in fact, respondent's said shirt product is not first-quality broadcloth, is not genuine broadcloth, is not the finest broadcloth, is not Sanforized broadcloth, is not lustrous broadcloth, and is not broadcloth, and whereas, further, in truth and in fact, respondent is not the manufacturer of the shirts which he sells and offers for sale; the customer does not buy direct from the manufacturer of said shirts; there is more than one profit between manufacturer and wearer of said shirts; the respondent's shirts will not be replaced or money refunded even months after wearing or at any time if said shirts are not 100 percent satisfactory; said shirts do not contain the equivalent of 25 percent more yardage than other shirts of similar price; the customer or wearer does not get either a better shirt for the same money or a similar shirt for less money than offered for sale or sold by respondent's competitors; respondent does sacrifice quality for price; most shirts are not sold to stores on a price basis, and stores or agents selling respondent's shirts are without large profit possibilities in selling respondent's shirt.

PAR. 5. The aforesaid false and misleading statements and representations so made by respondent in the course and conduct of his business, as aforesaid, have had and have the tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's shirts in lieu and instead of shirts of respondent's competitors, in consequence of which trade has been and is diverted to respondent from his competitors who do not misrepresent their products, all thereby substantially injuring respondent's competitors and competition in interstate commerce.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 16, 1935, issued and on October 19, 1935, served its complaint upon respondent, Sam Fisher, trading as Hollywood Shirt Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said

act. Respondent filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sam Fisher, is an individual trading as Hollywood Shirt Co., with his principal place of business located in the city and State of New York. For a number of years prior to the filing of the complaint the respondent has been and now is operating a store and also a mail order business dealing exclusively in shirts. While he sells at retail, the bulk of his business consists of mail orders. He has between 1,500 and 2,000 agents who solicit orders throughout the United States. The orders are mailed in to New York and the merchandise is shipped from respondent's place of business to the various purchasers in States other than the State of New York. Respondent advertises his merchandise and solicits agents in newspapers and trade magazines published in various States. He is in competition with other mail order houses who are likewise selling shirts either by direct delivery to the ultimate consumer, or, as does the respondent, by shipping the merchandise to the respective agents who in turn deliver the goods to the customer, collect the purchase price, and remit the money, less their commissions, to their respective firms.

PAR. 2. In the course and conduct of his business as aforesaid, the respondent up until October 16, 1935, sent out to prospective agents and prospective purchasers advertisements and circulars in which the respondent stressed two things: First, he emphasized the quality of the shirts and the sensationally low prices at which they are sold. He represented that the shirts are manufactured of the "finest sanforized lustrous broadcloth." Second, he employed the word "manufacturer" and stressed the fact that the shirts were being sold "directly from manufacturer to wearer;" that there were no profits to the middleman; that the shirts had not passed through many hands; and that

because of the direct transaction of shipping the shirts from manufacturer to wearer the money that is saved would inure to the benefit of the ultimate consumer.

PAR. 3. The statements made in the advertisements as above described did not conform to the true facts. The respondent does not now and never did own a factory, nor is he interested in any way in a shirt factory. All of his shirts are bought by him from an independent corporation which manufactured them; they are placed in stock and he then fills his orders from that stock as they come in. His representations, therefore, that the merchandise is shipped from the manufacturer direct to the wearer, and that the wearer benefits by reason of a saving in expenses, was not true. Not only is there the profit to the wholesaler, but also the commission which is paid to the agent.

PAR. 4. In the course and conduct of his business as aforesaid, respondent advertised and offered for sale as a "sales leader" a particular shirt for 57¢ as being manufactured from first quality, genuine broadcloth, when that was not true. The lowest construction of "single" broadcloth is 108 warp yarns per inch and 60 filling yarns per inch and the Commission so finds to be the fact. The particular cloth advertised by the respondent was 104 warp yarns per inch and 58 filling yarns per inch. It appears that since the filing of the complaint he had abandoned the particular manner of advertising objected to and refrained from representations that the shirts were being sold direct from manufacturer to wearer, and he has, since that time also modified the descriptive language used in the advertisements.

PAR. 5. The Commission finds that the representations and statements made by the respondent were false and misleading and had a tendency and capacity to divert business from competitors of the respondent who truthfully advertise their products.

PAR. 6. The record shows that the advertisements complained of had been discontinued some months prior to the taking of testimony in this case. There is no assurance in sight that respondent, if not prohibited, would not resume and continue his former acts and practices as hereinabove set out.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in commerce and constituted a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act

to create a Federal Trade Commission, to define its powers and duties, and for other purposes.”

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before an examiner of the Commission theretofore duly designated by it in support of the charges of said complaint and no evidence being offered in opposition thereto and upon brief filed herein by William L. Pencke, counsel for the Commission, brief of respondent and oral argument having been waived, 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, Sam Fisher, trading as Hollywood Shirt Company, his agents, servants, and employees, in connection with the sale, and the advertising and offering for sale, of shirts in interstate commerce, cease and desist from:

1. Representing, by use of the words “manufacturer” or “direct from manufacturer to wearer,” or words of similar meaning, or in any other manner, that the shirts sold by respondent are manufactured by him.

2. Representing, directly or indirectly, that in purchasing shirts from respondent in preference to shirts sold by competitors, the purchasers are buying the same from a manufacturer and are thereby saving a middleman’s profit.

3. Representing that any shirts sold by the respondent are manufactured from genuine broadcloth or finest sanforized, lustrous broadcloth unless and until such are the facts.

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

IN THE MATTER OF
GRIFFITH PIANO COMPANY

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

Docket 2674. Complaint, Dec. 30, 1935—Decision, July 11, 1936

Where a corporation engaged in manufacture of a square type of piano sold under trade name "SpinnetGrand," featured in colonial designs, mainly, and extensively advertised in newspapers through the United States, and with a reputation of merit because of its excellence of tone and unique design, and usually so advertised and depicted as to show the rectangular shape, short depth, and four legs, and with slogan, always, "Occupies only the space of a lounge"; and thereafter a dealer engaged in sale of its "Colonial Grand" grand piano, of conventional grand piano design in that sounding board or harp was in horizontal position and had shape of a wing or harp, with fifth leg supporting narrow tip end thereof—

- (a) Simulated in newspapers and periodical magazines, advertisements of such "SpinnetGrand" by said competitor manufacturer through so photographing its own product that only front part was visible, and impression was given that it was a square piano, and through making illusion complete by erasing fifth leg from depiction, and adopted phrase "Occupies no more space than a lounge or sofa," in imitation of aforesaid competitive slogan, with result that readers were lead into false belief that piano thus advertised by it was that made and sold by aforesaid competitor; and
- (b) Made false and disparaging statements about said competitive product, which it had placed on the floor of its showroom and which had been kept out of tune, through such salesmen's comments as "is merely an antique," and "Do you want a piece of furniture or a piano," and "The tone of this piano is not good and it has the action of the old square piano," and in various ways falsely, misleadingly, and unfairly criticized and disparaged same, including unfavorable and unjust tone comparisons between it and its own product;

With result that prospective purchasers were confused and misled by such false and misleading advertisements, and other such purchasers were diverted from its competitors by reason of such disparaging and false statements and comparisons:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. William L. Pencke 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Griffith Piano Co., a corporation, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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, Griffith Piano Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark and State of New Jersey.

PAR. 2. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution, in commerce between and among various States of the United States, of pianos, causing said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States of the United States other than the State of New Jersey. In the course and conduct of its business, Griffith Piano Co., Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. Mathushek Piano Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at the city of New York in the State of New York. It is now, and for more than 1 year last past has been, engaged in the manufacture of pianos and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing said products when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its business Mathushek Piano Co. was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 4. Mathushek Piano Co. is a manufacturer of a square type piano which it sells and distributes under the trade name of Spinet-Grand. Said piano is extensively advertised, and, among other newspapers, is carried in the Christian Science Monitor which has a large circulation throughout the United States. Said piano has had a large sale and acquired a reputation for merit among users and purchasers of pianos. By reason of its advertising expenditures, said Mathushek Piano Manufacturing Co. has acquired a valuable good-will in its

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product and in the trade name of SpinetGrand as applied thereto. In its said advertising of the said SpinetGrand, the Mathushek Piano Manufacturing Co. usually uses a picture of said piano, showing its rectangular shape, short depth or width, and the fact that it has only four legs. Said company for a long period of time has featured in its said advertising the slogan "occupies only the space of a lounge," or similar expression.

PAR. 5. The respondent advertises a certain make of pianos under the name of Colonial Grand Piano. Its advertisements which likewise appear in the Christian Science Monitor, other newspapers and magazines, simulate the advertisement of the Mathushek Piano Manufacturing Co., by showing a picture of a piano which is in fact a conventional grand piano but which has been photographed from such an angle that it gives the appearance of being a square piano, and the picture has been doctored or altered in that the fifth leg has been eliminated. Further to create the impression that said Colonial Grand Piano is a square piano, similar to the SpinetGrand, respondent uses the phrase "occupies no more space than a lounge or sofa." Such representations tend to, and do in fact, mislead the buying public by diverting purchasers who desire to buy a square piano, to respondent's establishment, and from competitors dealing in square pianos.

PAR. 6. In the course and conduct of its said business the respondent purchased one of said SpinetGrands and placed it upon the floor of its salesroom for the sole purpose of disparaging it in the eyes of its salesmen and prospective customers. The piano was placed upon the floor without being put in condition and without being tuned. Respondent's salesmen, in order to divert prospective customers from the SpinetGrand to its own product, referred to the SpinetGrand as being merely a piece of furniture and being of no use as a musical instrument. Its salesmen made statements that the SpinetGrand had been purchased by respondent for the sole purpose of showing "just how rotten it is. There is nothing like it—the worst toned piano in the world." In demonstrating the pianos the salesmen strike certain keys of the SpinetGrand in such a fashion that there is no resonance or fullness of tone, while playing cords and using the pedals in a correct manner on the Colonial Grand Piano. They also make further disparaging and untruthful statements to the effect that the bridge in the SpinetGrand is at the edge, and that there is, therefore, no vibration; that it is an old square piano put in a smaller frame; that its principle is wrong; that only one pedal on it works and that the other two are jokes. The representation is also made that the respondent is the only agent for the Mathushek Piano Co.; that there is no other agent in Newark, N. J., and that respondent does not know whether

the Mathushek Piano Co. has any agency in New York City; that respondent has sold four or five SpinetGrands, but that most of them have been returned. The statements and representations so made by the respondent's salesmen are false and disparaging because, in truth and in fact, the construction of said SpinetGrand permits full vibration; it is not an old square piano put in a smaller frame, but is of modern design and construction; it is constructed according to correct principles of piano building; all pedals on said piano function properly; the respondent has never been and is not now an agent of said Mathushek Piano Co. and is fully advised that there is an agent in the city of Newark; and the respondent also well knows that the factory and principal place of business of the Mathushek Piano Co. are now and have been for many years in the city of New York; respondent has never sold a SpinetGrand to any of its customers.

PAR. 7. The aforesaid false and misleading representations and disparaging statements so made by respondent in the course and conduct of his business, have had and do have the tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's pianos instead of the pianos advertised by the competitors of respondent, in consequence of which trade has been and is diverted to respondent from competitors who truthfully represent their products, thereby substantially injuring respondent's competitors and competition in interstate commerce.

PAR. 8. 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.

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 December 30, 1935, issued, and on January 2, 1936, served its complaint upon respondent, Griffith Piano Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent:

filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence, and brief in support of the complaint, the respondent having elected to file no brief; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Griffith Piano Company, is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in the city of Newark, N. J. It is now, and has been for a number of years, engaged in the sale and distribution of pianos. Respondent's sales and solicitations are made principally within, but are not confined to the State of New Jersey, sales and shipments being made, in the regular course of its business, to customers in the States of New York and Pennsylvania. Respondent is in competition with other concerns likewise engaged in the sale of pianos which, when sold, are shipped by said competitors, into and through the various States of the United States and the District of Columbia, to purchasers thereof.

PAR. 2. Among respondent's competitors, is a manufacturer and distributor of pianos whose factory and principal place of business is located in the city and State of New York. Said competitor manufactures a square type of piano which it sells under the trade name of SpinetGrand. This piano is featured mainly in colonial designs, is extensively advertised in newspapers throughout the United States and has acquired a reputation of merit because of its excellence of tone and unique design. Usually the advertisements of such competitor carry an illustration of said SpinetGrand, showing the rectangular shape, the short depth, and the four legs of the piano; and the text of the advertisement always includes the slogan that the instrument "occupies only the space of a lounge." When sold, said competitor ships said SpinetGrand piano from its place of business in the State of New York to its customers into many States of the United States, including the States of Pennsylvania and New Jersey.

PAR. 3. Respondent offers for sale a grand piano under the name of "Colonial Grand." This piano is of the conventional grand piano design, in that the sounding board or harp is in a horizontal position and has the shape of a wing or harp. The instrument has five legs, the fifth leg supporting the narrow tip end of the wing. Respondent, in advertising said piano in newspapers and musical magazines, simulated the advertisements of the competitor manufacturing the SpinetGrand. Said Colonial Grand was photographed from such an angle that only the front part is visible, giving the impression that it is a square piano, and the illusion was made complete by erasing the fifth leg which originally showed in the picture, so that the observer was led to believe that the picture represents a square piano. Moreover, the respondent adopted the phrase "occupies no more space than a lounge or sofa," an obvious imitation of its competitor's "occupies only the space of a lounge." The said advertisement of respondent simulated and resembled so closely the advertisement of its said New York competitor that readers thereof were led into the false belief that the piano so advertised by respondent was the piano manufactured and sold by the said competitor.

PAR. 4. In the course and conduct of its business as aforesaid, respondent made false and misleading statements and disparaged the products of its said competitors. In one instance, respondent purchased one of the SpinetGrand pianos, manufactured and sold by its aforementioned New York competitor, and placed it on the floor of its showroom, and through its salesmen made false and disparaging comments about said SpinetGrand, such as "this is merely an antique," "do you want a piece of furniture or a piano," and "the tone of this piano is not good, and it has the action of the old square piano," and did in various and divers other ways falsely, misleadingly, and unfairly criticize and disparage the same. Unfavorable and unjust tone comparisons were made between said piano and the piano of respondent by concealing from the prospective purchaser the fact that the said competitor's piano had been kept out of tune.

PAR. 5. The proof shows that prospective purchasers were confused and misled by the respondent's false and misleading advertisements, and that other prospective purchasers were diverted from respondent's competitors by reason of the disparaging and false statements and comparisons hereinabove described.

PAR. 6. The record shows that the advertisements complained of have been discontinued, and that the disparagement of competitor's product has been abandoned; but there is no assurance in sight, that the respondent, if not prohibited, would not resume and continue its former acts and practices as hereinabove set forth.

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CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in commerce constituting 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 testimony and evidence taken before an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and no evidence being offered in opposition thereto, and upon brief filed by William L. Pencke, counsel for the Commission, brief of respondent and oral argument of both counsel having been waived, 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, Griffith Piano Company, a corporation, its agents, servants, and employees, in connection with the sale, and the advertising and offering for sale of pianos in interstate commerce, cease and desist from:

(1) altering, deleting, or changing in any manner whatsoever illustrations of pianos sold by it so as to give the impression that the piano offered for sale is a square piano of colonial design, when such is not the fact;

(2) simulating, in the advertisements or illustrations of its products, the advertisements, or illustrations of competitors in such manner as to confuse or mislead prospective purchasers as to the design, type, character, or identity of the piano so offered for sale;

(3) permitting or authorizing its agents, servants, or employees to make false and misleading statements or false, disparaging comments concerning pianos of any of its competitors.

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

Complaint

IN THE MATTER OF

ROSS KNITTING MILLS, INC., TRADING IN ITS SAID CORPORATE NAME AND AS ROSS SPORTWEAR CO., AND NATHAN HIRSCH, TRADING AS ROSS SPORTWEAR CO.

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

Docket 2671. Complaint, Dec. 27, 1935—Decision, July 15, 1936

Where a corporation engaged in the sale and distribution of knitted garments and other wearing apparel, and its similarly engaged president, used on their letterheads, business cards, invoices, and in other ways in soliciting sale of and selling their aforesaid goods, words "Manufacturers of Sweaters, Dresses, Suits, and Skirts," and abbreviation and words "Manfrs. of Knitted Suits, Sweaters, and Skirts," and other words and representations of similar effect, notwithstanding fact they did not knit, make, or manufacture products sold or distributed in commerce by them, own, operate, or control any mill, plant, or factory knitting or making the same, and preference of certain retail merchants of knitted garments and other wearing apparel for dealing directly with mill owner and manufacturer, and their impression and belief that they can buy more cheaply and eliminate middleman's profits by so dealing;

With tendency and capacity to mislead and deceive many of their customers and prospective customers into the erroneous belief that they owned, operated, or controlled a mill, etc., making said products, and into erroneous belief that those buying said garments sold by them were purchasing same directly from the manufacturers thereof and were thereby eliminating profits of middlemen and obtaining various other advantages not to be had by purchasing goods of other than the manufacturer, and with tendency unfairly to divert business from and otherwise injure and prejudice competitors making the garments sold by them and rightfully representing themselves manufacturers thereof, and competitors purchasing said articles in which they deal and who do not thus misrepresent themselves:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg 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

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Federal Trade Commission, having reason to believe that Ross Knitting Mills, Inc., a corporation, trading in its said corporate name and as Ross Sportwear Company, and Nathan Hirsch, trading as Ross Sportwear Co., hereinafter referred to as the 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 to the interest of the public, the said Federal Trade Commission hereby issues its complaint against the respondents and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Ross Knitting Mills, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in the city of New York in the State of New York; that said Ross Knitting Mills, Inc., trades under its said corporate name and under the name and style of Ross Sportwear Co.; and that respondent Nathan Hirsch, who is president of said Ross Knitting Mills, Inc., is an individual trading under the said name and style of Ross Sportwear Co. That said respondents are and have been for more than 1 year last past engaged in selling and distributing knitted garments and other apparel to purchasers located in a State or States other than the State of New York, and pursuant to such sales and as a part thereof, cause and have caused said knitted garments and other apparel so sold to be transported from their place of business in the State of New York into and through States other than the State of New York to said purchasers in the State or States in which they are located.

PAR. 2. That during all of the said time stated in paragraph 1 hereof there have been and now are other persons, firms, and corporations engaged in the business of selling knitted garments and other apparel similar to those sold by respondents, and, pursuant to such sales and as a part thereof, cause and have caused such commodities to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations the respondents have been and are in substantial competition.

PAR. 3. That the said respondent, Ross Knitting Mills, Inc., formerly sold and distributed knitted garments and other apparel to its customers under its said corporate name, and still uses said corporate name in its dealings with mills from which it purchases its products. That respondent Ross Knitting Mills, Inc., and the respondent Nathan Hirsch have used during the time set forth in paragraph 1 hereof, and now use, in the sale and distribution of such knitted garments and other apparel the name "Ross Sportwear Company."

PAR. 4. That the said respondents, Ross Knitting Mills, Inc., and Nathan Hirsch, trading under the said name and style of Ross Sportwear Co., in the course and conduct of their business as described in paragraph 1 hereof, have used and now use on their letterheads, business cards, invoices, and otherwise, in soliciting the sale of and selling their goods as aforesaid the words "Manufacturers of Sweaters, Dresses, Suits and Skirts," the abbreviation and words "Manfrs. of Knitted Suits, Sweaters and Skirts" and other words and representations to similar effect; that, in truth and in fact, the said respondents have not manufactured and do not manufacture the products so sold by them; and that the said respondents have not controlled and do not control the mill or mills or factory or factories in which the products sold by them are manufactured, but, on the contrary, fill their orders with products which are manufactured in a mill or factory or mills or factories which they neither own, operate, nor control.

PAR. 5. That the use by the respondents of the words and abbreviations "Manufacturers of" and "Manfrs. of" and other similar words and representations as aforesaid has the capacity to mislead and deceive and does mislead and deceive many of respondents' customers and prospective customers into the erroneous belief that respondents operate or control a mill or factory or mills or factories in which the products sold by respondents as aforesaid are manufactured and that persons, firms, and corporations buying said garments sold by respondents are buying said garments directly from the manufacturers thereof, thereby eliminating the profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from middlemen.

PAR. 6. That there are among the competitors of respondents referred to in paragraph 2 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof; that there are others of said competitors who purchase the garments in which they deal and resell same and who do not represent that they manufacture said garments; and that the aforesaid acts and practices of the respondents in representing that they own or operate mills or factories in which the products sold by them are manufactured tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. That the aforesaid acts and things done by the respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce within the intent and meaning of Section 5 of the said Act of Congress hereinabove entitled.

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 27th day of December 1935, issued and served its complaint in this proceeding upon the respondents, Ross Knitting Mills, Inc., a corporation and trading as Ross Sportwear Co., and Nathan Hirsch, an individual, trading as Ross Sportwear Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondents did not file answer), testimony and evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Nathan Hirsch, President of Ross Knitting Mills, Inc., a corporation, and trading as Ross Sportwear Co.; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint (respondents did not file brief), and the Commission, having duly considered the same and being 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 Ross Knitting Mills, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in the city of New York in said State. It trades under its said corporate name and under the name and style of Ross Sportwear Co.

Respondent Nathan Hirsch is president of the respondent Ross Knitting Mills, Inc., and also trades as an individual under the name and style of Ross Sportwear Co., having his principal place of business at New York, N. Y.

For more than 1 year last past respondents have been engaged in the sale and distribution of knitted garments and other wearing apparel in commerce between and among the various States of the United States, causing said products when sold by them to be shipped from their places of business in the State of New York to purchasers thereof located in States other than the State of New York.

In the course and conduct of their said business respondents have been at all times herein mentioned in substantial competition with

other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of knitted garments and other wearing apparel.

PAR. 2. Respondent Ross Knitting Mills, Inc., formerly sold and distributed knitted garments and other wearing apparel to customers under its said corporate name, and used said corporate name in its dealings with mills from which it purchases its products.

Respondents Ross Knitting Mills, Inc., and Nathan Hirsch, trading as Ross Sportwear Co., in the course and conduct of their business have used on their letterheads, business cards, invoices, and in other ways, in soliciting the sale of and selling their goods as aforesaid, the words "Manufacturers of Sweaters, Dresses, Suits, and Skirts," the abbreviation and words "Manfrs. of Knitted Suits, Sweaters, and Skirts," and other words and representations of a similar effect.

PAR. 3. In truth and in fact respondents did not and do not knit, make, or manufacture the products which were sold and distributed in interstate commerce by them; nor did they or do they own, operate, or control any mill, plant, or factory in which said products were or are knitted, made, or manufactured.

PAR. 4. There is a preference on the part of certain retail merchants of knitted garments and other wearing apparel to deal directly with the mill owner and manufacturer thereof. There is an impression and belief existing among certain of said retail merchants that they can buy goods at a cheaper price and that they can eliminate middlemen's profits by dealing directly with the mill owner or manufacturer.

The use by respondents of the word "Manufacturers" and the abbreviation "Manfrs." as aforesaid, has and has had the capacity and tendency to mislead and deceive many of respondents' customers and prospective customers into the erroneous belief that respondents own, operate, or control a mill or factory, or mills or factories, in which the products sold by the respondents as aforesaid are manufactured, and into the erroneous belief that persons, firms, partnerships, and corporations buying said garments sold by respondents are buying said garments directly from the manufacturers thereof, and are thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

PAR. 5. There are among the competitors of respondents, referred to in paragraph 1 hereof, many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same and who do not represent that they manufacture said garments.

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The aforesaid acts and practices of the respondents, in which they represent that they own, operate, or control mills or factories in which the products sold by them are manufactured, tend to unfairly divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The aforesaid acts and practices of respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and to competitors of respondents, 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 before the Federal Trade Commission upon the complaint of the Commission and the testimony and evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief filed herein, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondents, Ross Knitting Mills, Inc., trading under its said corporate name and as Ross Sportwear Company, or trading under any other name or names, and Nathan Hirsch, trading as Ross Sportwear Company, or trading under any other name or names, their officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale, or distribution in interstate commerce of knitted wear or other wearing apparel, hereby cease and desist from:

Representing through their trade names, letterheads, business cards, invoices, labels, or in any other manner, that respondents own, operate, or control a mill or factory in which their said products are knitted or manufactured.

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

Syllabus

IN THE MATTER OF
EDISON-BELL COMPANY, INC., ET AL.

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

Docket 2223. Complaint, May 16, 1935¹—Decision, July 17, 1936

Where the names, letter combinations, and symbols "Edison," "Bell," representation of a bell and name "Blue-bell," "Marconi," "Victor," "Brunswick," "Majestic," "R. C. A.," "E. B.," and "G. E.," and same letters written in script in a circle, with scroll-like interior decoration, had come to have a peculiar meaning in the radio world and among dealers and the buying public and in foreign countries, and to convey to the public mind a significance distinct from other names employed in such trade or world as meaning the radio and other products of certain well-known concerns, and to be associated with certain famous inventors in the field of sound transmission and with their successors in interest, and the value of said products, thus identified by said names, combinations, and symbols, made and sold by said concerns and interests, had come to amount to millions of dollars annually, and said names, etc., as those of well-known and long-established individuals, companies, and corporations, used as such and as standard brands, marks, and symbols on radio sets, tubes, etc., had come to have a fixed and stable value generally throughout the United States and foreign countries, and to be relied upon by the purchasing public as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of said products and increased sales, and said names, etc., as attached to such standard brand products, had come to have value to the thousands of dealers therein, in addition to their value to the owners and users thereof in commerce; and thereafter,

Certain individuals, former partners, and various corporations organized and controlled by them and their families and operated as a single business, engaged in the manufacture and sale of radio receiving sets, tubes, and parts, made or assembled at various places, and in the sale of both standard makes and spurious and relatively cheap and different "gyp" makes in simulation of the former in their design, mark, and brand, and who operated unsuccessfully under many different company, corporate, trade, and brand names prior to adoption and use of name "Edison-Bell," and whose practice it was to substitute in standard brand radio sets their so-called "Edison-Bell," for standard tubes originally installed therein, and to advertise and sell such products, thus marked, under said name and letters "E. B." and representation of a bell—

- (a) Adopted and used, without right and without permission of the owners of said names, letters, and symbols, as corporate, partnership, and trade names, and as marks, brands, and designations for their aforesaid sets, tubes, and other products, names, etc., which closely resembled, in size, typo-

¹ Amended and supplemental.

graphic arrangement and general appearance, the names, letters, and symbols lawfully owned and used by aforesaid owners, as hereinbefore set forth, and which included "Edison" and "Bell," and representation of a bell, and letters "E. B." encircled with scroll-like interior decorations, and such corporate and brand names as "Edison-Bell," "Edison International," and "Edison," in combination with other words, letters, and designations in colorable imitation of said names "Edison" and "Bell," and similarly used names "Victor," "Brunswick," "Majestic," and letters "R. C. A." and "G. E.," encircled in script with scroll-like interior decorations, and such names, letters, etc., in colorable imitation of the aforesaid, as "Victor International," "Brunswick," "Majestic International," "R. S. A.," and "R. C. A.," and letters "E. B.," encircled in script, etc.;

With effect of causing confusion in the trade and enabling them to sell to the public their said radio sets and parts and tubes as and for those made and sold in interstate commerce by other persons, partnerships, and corporations as above set forth, and with capacity and tendency so to do and to lead public to believe that their said products, thus marked and identified, were those of aforesaid well-known companies or interests, and with results that they thereby appropriated good will belonging to said respective competitor concerns and interests, and business was unfairly diverted from such concerns and interests, and from other competitors who do not resort to such practices, to the injury of the owners of said marks, letters, and symbols and of said competitors, and to the prejudice and injury of the public, which had come to believe that products marked or branded with such well-known names, etc., regardless of price or source of supply, were made and sold by the lawful owners and users of said names, etc., and to accept such products thus named, etc., as their products, and members of which were influenced and caused thereby to buy such radio sets, tubes, etc., thus branded and sold, in imitation of the genuine products, and with further result that dealers in such products were forced to misbrand or place standard brand names and symbols on similar and non-genuine articles in order to meet such competition, and there was placed in the hands of others, to whom said products were sold, means whereby injury might be and was done to competitors dealing in the genuine and honestly marked products, to the injury of manufacturers of and dealers in the legitimate articles, and of the lawful owners and users of such standard brands, names, marks, and symbols;

- (b) Placed, or caused to be placed, upon their said products, aforesaid standard brands, names, and letters and symbols, and upon the boxes, cartons, or containers thereof, with such standard names, etc., usually displayed in large and easily discernible bold lettering, while names of their corporate or business organizations making and selling same were in small and hardly discernible letters; and
- (c) Advertised said company, corporate, and trade names, and products thus marked, in newspapers, periodicals, and other bulletins circulated through the mails in interstate and foreign commerce, so as to convey to mind of purchasing public impression that products thus advertised were the genuine standard makes or brands:

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

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Before *Mr. John W. Addison*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Pennie, Davis, Marvin & Edmonds and *Mr. D. V. Mahoney*, of New York City, 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 Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, Fox Radio Corporation, and Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, individually and trading under the name Edison-Bell Co., hereinafter referred to as 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Edison-Bell Co., Inc., is a corporation organized and existing since September 23, 1933, under and by virtue of the laws of the State of New York, with its principal offices and place of business at 166 Greenwich Street, New York City, State of New York.

(b) Respondent, Fox Radio & Television Co., Inc., is a corporation organized and existing since February 11, 1932, under and by virtue of the laws of the State of New York, with its principal offices and place of business at 60 Cortlandt Street, New York City, State of New York.

(c) Respondent, Atlas Television Co., Inc., is a corporation organized and existing since October 10, 1932, under and by virtue of the laws of the State of New York, with its principal offices and place of business at 58 Cortlandt Street, New York City, State of New York.

(d) Respondent, York Television & Radio Corporation, is a corporation organized and existing since October 10, 1932, under and by virtue of the laws of the State of New York, with its principal offices and place of business at 166 Greenwich Street, New York City, State of New York.

(e) Respondent, Bob Radio Corporation, is a corporation organized and existing since October 4, 1932, under and by virtue of

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the laws of the State of New York, with its principal offices and place of business at 174 Greenwich Street, New York City, State of New York.

(f) Respondent, Music Masters Corporation, is a corporation organized and existing since January 31, 1932, under and by virtue of the laws of the State of New York, with its principal offices and place of business at 71 Cortlandt Street, New York City, State of New York.

(g) Respondent, Fox Radio Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal offices and place of business located at 60 Cortlandt Street, New York City, State of New York.

(h) Respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, operate as partners under the trade name "Edison-Bell Company," with their principal offices and place of business at 60 Cortlandt Street, New York City, State of New York.

(i) Respondent, Robert Siegel, is president and a director and stockholder in respondent Edison-Bell Co., Inc.

(j) Respondent, Aaron L. Siegel, is vice president of, and a director and stockholder in, respondent Edison-Bell Co., Inc.

(k) Respondent, Samuel Fox Barsky, is treasurer of, and director and stockholder in Edison-Bell Co., Inc.

(l) Respondent, Simon Barsky, is secretary of, and a director and stockholder in respondent Edison-Bell Co., Inc.

(m) Respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, are also officers, directors, and stockholders in each and every of the several respondent corporations, namely, Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, and Fox Radio Corporation, all of which said respondent corporations were created and incorporated, or caused to be created and incorporated, by said respondent individuals, and said respondent individuals are engaged in the management, operation, and promotion of the business of said respondent corporations, for whom they act also as salesmen and agents, and are, or have been for more than 1 year last past, holders and owners of the legal or beneficial title or interest in, or to the outstanding stock of said corporations. The business carried on by said respondent corporations and said respondent individuals is essentially a single business, namely, that of manufacturing or assembling radio sets and manufacturing radio tubes, and selling them to the trade and the purchasing public, and all of the profits from

the operations of the business thus conducted enure to respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, the officers, directors, and stockholders of said respondent corporations and owners of said trade name "Edison-Bell Company." The books, records, and accounts of the said business are kept in one central office from which the business is managed, controlled, and directed by one and the same set of officers, directors, and individuals as aforesaid, common to all, and deliveries of radio tubes and radio sets made, sold, and delivered by said respondents within a radius of 75 miles from their several places of business in New York City, New York State, or other States of the United States, are made by one truck jointly controlled and used by all of said respondents.

PAR. 2. Respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, in the course and conduct of their business as set out in paragraph 1, have used various trade names and have incorporated or caused to be incorporated under various names, corporations in whose names they have operated and conducted business. Among such trade names and corporate names so adopted and so used by respondents, is the trade name "Edison-Bell Company" and the corporate name "Edison-Bell Company, Inc.," and other names and designations. Said respondents incorporated or caused to be incorporated in the State of New York, under the name "Edison-Bell Company, Inc.," a corporation and registered or caused to be registered in the State of New York and applied to but was denied registration by the United States Patent Office upon the opposition of Thomas A. Edison, Inc., the trade name "Edison-Bell Company" and the corporate name "Edison-Bell Company, Inc.," together with a device of a circle with scroll-like interior projections enclosing the script letters "E. B." and have used and are using said names "Edison-Bell Company" and "Edison-Bell Company, Inc.," and the said device of a circle with scroll-like interior projections enclosing the script letters "E. B." and other names and designations as marks or brands affixed to and to designate radio sets and radio tubes manufactured and sold by said respondents.

Said name "Edison-Bell Company" and said corporate name "Edison-Bell Company, Inc.," are formed by the joinder of the name "Edison" which refers to Thomas A. Edison and the name "Bell" which refers to Alexander Graham Bell, two well-known outstanding individuals in the electric, radio, and sound transmission fields. The letters "E. B." in the said device of a circle with scroll-like interior projections enclosing the script letters "E. B." refer to and represent the names "Edison" and "Bell."

PAR. 3. All of the respondents, cooperating among themselves and together with others, are now and for more than 1 year last past, have been engaged in the manufacture of radio sets and radio tubes and the sale of said radio sets and radio tubes between and among the various States of the United States, causing said radio sets and radio tubes, when sold by them, to be transported from their several places of business located in the States of New York, Massachusetts, and Rhode Island to the purchasers thereof, some located in the States of New York, Massachusetts, and Rhode Island, and others in various other States of the United States, the District of Columbia, and foreign countries, and there is now and has been for more than 1 year last past a constant current of trade and commerce by said respondents and others in such radio sets and radio tubes between and among the various States of the United States, the District of Columbia, and foreign countries. In the course and conduct of their business said respondents and others are now and have been for more than 1 year last past, in substantial competition with other corporations, partnerships, and persons engaged in the sale of radio sets and radio tubes between and among the various States of the United States, the District of Columbia, and foreign countries in interstate and foreign commerce.

PAR. 4. (a) Respondents, Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, Fox Radio Corporation, and respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, individually and trading under the name "Edison-Bell Company" and as officers and directors of said respondent corporations cooperating together, among themselves and with others in the course and conduct of their business as set out in paragraphs 1, 2, and 3, have conceived and are carrying out a general scheme to deceive the public and to compete unfairly with other dealers in radio sets and radio tubes, who are in competition in interstate and foreign commerce with said respondents and others. Said scheme involves the placing of false and deceptive name plates and labels on the radio sets and radio tubes so manufactured and sold. In furtherance of such scheme and as instrumentalities to effect their purposes, said respondents without authority have appropriated and used, and are now using upon radio sets and radio tubes, sold by them, and upon wrappers, cartons, and containers in which they are enclosed, various names and devices or colorable imitations thereof which are, or have been, in use by established manufacturers upon and in connection with radio sets and radio tubes or similar merchandise. Said respondents and others

attach such false names and marks to radio sets and radio tubes manufactured, assembled, sold, and shipped by them from their several places of business in the State of New York and other States throughout the several States of the United States, the District of Columbia, and foreign countries in interstate and foreign commerce by means of escutcheon plates, stamps, stencils, and labels. Among the name plates, marks, and labels so being used by respondents are the following: "Edison," "Bell," "Edison-Bell," "Edison-Bell Duo Vox," "Edison Chimes," "Edison Complete," "Edison International," "Edison Radio Stores, Inc.," "Edison" with a representation of a bell; "Bell" with a representation of a bell; "Victor," "Victor International," "Victor Television"; "Majestic"; "Brunswick" (Brunswick); the letters "RSA" and "RCI"; and a device of a circle with scroll-like interior projections enclosing the script letters "E. B."; and the names "Edison," "Bell," "Victor," "Majestic," "Brunswick" (Brunswick) standing alone or in conjunction with other names or prefixes, suffixes, and devices in connection therewith.

(b) Respondents have printed or caused to be printed and feature the names "Edison-Bell," "Edison-Bell Company, Inc." and "New Improved Edison-Bell Duo Vox Radio" and other names and designations on display cards which are set up in prominent places in show windows and around the stores in which their business is conducted, and have printed or caused to be printed cardboards and cards attached to radio sets and on labels pasted on cartons or containers in which the radio tubes and radio sets are packed and delivered to retail dealers and the public, and have caused to be printed on leaflets and in magazines and papers distributed by them through the mails and by their salesmen, agents, and representatives to retail dealers and the public in the States of New York, Massachusetts, and Rhode Island, and shipped and transported from said States through and into other States of the United States, and have caused to be printed letterheads, billheads, and stationery upon all of which is printed and featured the name "Edison-Bell" together with the representation of a bell, which they have circulated and distributed throughout the United States, the District of Columbia, and foreign countries to retail dealers and the public.

(c) Respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, have caused to be printed personal business cards across the center upon the face of which is printed in large type "Edison-Bell Company, Inc.," and in smaller type "116 Greenwich Street, New York, N. Y.," and in the upper left-hand corner the representation of a bell across the top of which bell is printed "Edison-Bell" and on which bell are printed the initials

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"E. B." and the words "Duo Vox Radio." On the lower left-hand corner of said cards is printed the name of either Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, or Simon Barsky, which cards are distributed by them as officers, directors, agents, or salesmen representing respondent, Edison-Bell Co., Inc., and the several other respondent corporations hereinabove designated, in person and through the mails to retail dealers and the purchasing public in the State of New York and other States of the United States, the District of Columbia, and foreign countries.

PAR. 5. The use by respondents, Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, Fox Radio Corporation, and Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, individually and trading under the name Edison-Bell Co., and other trade names, of the names including the corporate name Edison-Bell Co., Inc., and the trade name Edison-Bell Co., and devices as set out in paragraphs 2, 3, and 4, is wholly unauthorized by the owners of said names and devices and gives to respondents' goods a salability which they would not otherwise have and gives said respondents an advantage over their competitors who do not use such means, because the true origin of respondents' goods is concealed and a reputable but false origin attributed to them. Moreover, it is the appropriation by respondents, of the reputation and good will of others at the expense of and injury to such others which have created such reputation and good will and deceives the public into believing that respondents' products originate with well-known and reputable concerns, contrary to the fact. Thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 6. For more than 30 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, dictaphones, and transmitting 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 ma-

chines and articles above referred to bear the name "Edison" as part of their brand, and such name "Edison" has acquired a valuable good will as identifying the manufacturer of said 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 the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1926-30 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 the radio sets manufactured and sold by Thomas A. Edison, Inc., feature the name "Edison" as part of their brand name.

The name "Edison" refers to Thomas A. Edison, the great inventor in the electrical field and the pioneer in the talking machine and radio industry, the right to the use of which name was vested in Thomas A. Edison, Inc., by Thomas A. Edison and was extensively advertised and has long previously been used and continues to be used by Thomas A. Edison, Inc. on radio sets, phonographs, and other electrical devices and appliances, sold and shipped in interstate and foreign commerce.

PAR. 7. During many years last past the Brunswick-Balke-Collender Co. 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 for many years last past. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand name, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Co. 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 of said Brunswick-Balke-Collender Co. was sold to Warner Brothers Pictures, Inc., which company organized the 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 combination radio and phonograph sets.

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 by Brunswick Radio Corporation has been suspended, 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-Collender Co. and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States and in foreign countries. During all the time the Brunswick-Balke-Collender Corporation and Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets said companies expended large sums of money in advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

"Bronswick" the name used by respondents is a colorable imitation of the name "Brunswick" which has long been previously used by the Brunswick-Balke-Collender Co. and Brunswick Radio Corporation on radio sets, phonographs, and combination radio and phonograph sets.

PAR. 8. For many years last past the Victor Talking Machine Co., Camden, N. J., has been manufacturing and selling phonographs and phonograph records, which phonographs have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public. During all this period the phonographs, phonograph records, and other articles manufactured and sold by said company have featured the name "Victor" as part of their trade name, which said name has been attached in a prominent place to said machines, sold and shipped in interstate and foreign commerce.

In 1929 the Radio Corporation of America obtained control of said Victor Talking Machine Co. and organized a company under the corporate name "RCA-Victor Co.," and also organized a company under the name of "The RCA Manufacturing Co. Inc.," which company is engaged in the manufacture and sale of radio sets and combination radio and phonograph sets. All of said sets bear the name "Victor," either alone or in combination with other letters or words in a prominent place on said sets. Said radio sets and combination radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past 25 years the Victor Talking Machine Co. has spent approximately \$70,000,000 in advertising, and the word "Victor" has always prominently ap-

peared in said advertising. At the present time RCA-Victor Co. is advertising its radio sets and radio tubes in a number of magazines having a large national circulation and in other publications and newspapers.

The name "Victor" when used on radio sets and radio tubes is the rightful property of the RCA-Victor Co. and the Victor Division of the RCA Manufacturing Co.

The said initials "RCA" have long been used as marks or brands to designate radio sets and radio tubes and other merchandise manufactured, sold and shipped in interstate and foreign commerce by said RCA-Victor Co., the Victor Division of the RCA Manufacturing Co. and the Radio Corporation of America.

The device or initials "RSA" and "RCI" used by respondents are colorable imitations of "RCA," the recognized abbreviation of a corporate name of the well-known company, viz, Radio Corporation of America.

PAR. 9. The name "Bell" and the representation of a bell, when used in connection with sound reproduction and sound transmission in the electrical and radio field refers to the great inventor Alexander Graham Bell and is the property of the said Alexander Graham Bell and his successors and assigns. The common law title to the name "Bell" is vested, by long and continued use since 1886, in the American Telephone & Telegraph Co., its subsidiaries and associates, and the Western Electric Co., Inc. Western Electric Co., Inc. manufactures, sells, extensively advertises, and ships radio sets, radio tubes, and radio batteries in interstate and foreign commerce, and uses the name "Blue Bell" and the representation of a bell as a brand name to designate its said products. The representation of a bell has long been used and extensively advertised by the American Telephone & Telegraph Co. as a symbol or trade designation in its business.

PAR. 10. The name "Majestic" is a name long associated with radio sets and is the legal property of Grigsby-Grunow Co., who were the original makers of radio sets branded with the name "Majestic," which are extensively advertised, sold, and shipped in interstate and foreign commerce by the said Grigsby-Grunow Co. Said name "Majestic" is now vested in Frank McKey as trustee in bankruptcy for the creditors of said Grigsby-Grunow Co. The said trustee holds title thereto by virtue of authority vested in him by the United States District Court for the Northern District of Illinois.

PAR. 11. A device of a circle with scroll-like interior projections enclosing the script letters "G. E." is the property of General Elec-

tric Co. and has long been used and extensively advertised by said General Electric Co. as a mark or brand to designate the products manufactured, sold, and shipped in interstate and foreign commerce by said General Electric Co. The device used by respondents of a circle with scroll-like interior projections enclosing the script letters "E. B." is a colorable imitation used by respondents of this well-known device.

PAR. 12. The acts and things alleged and done by respondents, are each and all of them to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate and foreign 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 17th day of August 1934, issued its complaint and caused the same to be served upon the respondents, Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Music Masters Corporation, and upon Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky as officers, agents, and representatives of said corporation. Respondents filed answer to the complaint with the Commission on the 1st day of October 1934.

After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Carrel F. Rhodes, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by Pennie, Davis, Marvin, and Edmonds, and D. V. Mahoney, attorneys for the respondents. Said hearings were had beginning January 7 and continuing through January 23, 1935, when they were adjourned subject to notice.

Thereafter, this matter came on to be heard upon a motion of the attorney for the Commission, that the aforesaid complaint be amended and supplemented in certain particulars. The motion having been heard and granted by the Commission, the Federal Trade Commission on the 16th day of May 1935 filed an amended and supplemented complaint herein, charging respondents with cooperating

among themselves and together with others in the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act, and caused same to be served upon the respondents, Edison-Bell Co., Inc., Fox Radio and Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, Fox Radio Corporation of New York City, New York; Robert Siegel, Aaron Siegel, Samuel Fox Barsky, and Simon Barsky, individually and as partners trading under the name Edison-Bell Co. of New York City, New York.

All of the respondents filed answer to the amended and supplemental complaint on the 4th day of June 1935, and further proceedings were had before the aforesaid examiner and testimony and documentary evidence were offered and received both in support of and in opposition to the allegations of the amended and supplemental complaint, and the testimony and documentary evidence taken, both in support of and in opposition to the allegations of the complaint and the amended and supplemental complaint, was duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint and amended and supplemental complaint, the answers thereto, the testimony and evidence and brief in support of the amended and supplemental complaint, and the Commission having duly considered the same, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondents, Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, are individuals. All of said individual respondents reside in the city and State of New York. Said individuals have been engaged in the radio business for a number of years, and prior to the organization of respondent corporations operated under numerous company and trade names. Said respondent individuals for many years prior to and up to the date of the organization of respondent corporation, Edison-Bell Co., Inc., on or about September 23, 1933, operated as a copartnership under the trade name Edison-Bell Co.

Respondent, Edison-Bell Co., Inc., is a corporation organized under the laws of the State of New York, on or about September 23, 1933, with its principal office and place of business at 60 Cortlandt Street, New York City, State of New York. (There were 100 shares of stock issued in this corporation, 50 shares to respondent, Robert Siegel, and 50 shares to respondent, Simon Fox Barsky.)

Findings

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Respondent, Fox Radio and Television Co., Inc., is a corporation organized under the laws of the State of New York on or about February 11, 1932, with its principal office and place of business at 60 Cortlandt Street, New York City, State of New York. (This corporation did not issue any stock.)

Respondent, Atlas Television Co., Inc., is a corporation organized under the laws of the State of New York on or about October 10, 1932, with its office and principal place of business at 58 Cortlandt Street, New York City, State of New York. (There were only three shares of stock issued by this corporation: one share Class B stock to respondent, Aaron L. Siegel, one share Class A stock to Murray Siegel, a brother of respondents, Robert Siegel and Aaron L. Siegel, and one share of Class B stock to Reitha Barsky, wife of respondent, Samuel Fox Barsky.)

Respondent, York Television & Radio Corporation is a corporation organized under the laws of the State of New York on or about October 10, 1932, with its office and principal place of business at 166 Greenwich Street, New York City, State of New York. (There were only two shares of stock issued by this corporation: one share to respondent, A. L. Siegel, and one share to Reitha Barsky, wife of respondent, Samuel Fox Barsky.)

Respondent, Bob Radio Corporation, is a corporation organized under the laws of the State of New York, on or about October 4, 1932, with its office and principal place of business at 174 Greenwich Street, New York City, State of New York. (There were only two shares of stock issued by this corporation: one share to respondent, A. L. Siegel, and one share to Reitha Barsky, wife of respondent, Samuel Fox Barsky.)

Respondent, Music Masters Corporation, is a corporation organized under the laws of the State of New York, on or about January 31, 1932, with its office and principal place of business at 71 Cortlandt Street, New York City, State of New York. (This corporation did not issue any stock.)

Respondent, Fox Radio Corporation, is a corporation organized under the laws of the State of New York, with its principal office and place of business at 60 Cortlandt Street, New York City, State of New York. (There were 20 shares of stock issued by this corporation: 10 shares to respondent, Samuel Fox Barsky, and 5 shares to respondent, A. L. Siegel, and 5 shares to Aida Siegel, wife of respondent, Robert Siegel.)

Respondent, Robert Siegel, is president and a director and stockholder in respondent, Edison-Bell Co., Inc., and is an officer and director in each of the several other respondent corporations.

Respondent, Samuel Fox Barsky, is secretary and treasurer of Edison-Bell Co., Inc., president of Fox Radio Corporation, and a stockholder and director in each of the said corporations, and is an officer and director in each of the several other respondent corporations.

Respondent, Aaron L. Siegel, is first vice president and director in each of the following several respondent corporations: York Television & Radio Corporation, Music Masters Corporation, Atlas Television Co., Inc., Bob Radio Corporation, Fox Radio & Television Co., Inc., and a stockholder in York Television & Radio Corporation, Atlas Television Co., Inc., and Bob Radio Corporation.

Respondent, Simon Barsky, is second vice president and director in each of the following several corporations: York Television & Radio Corporation, Music Masters Corporation, Atlas Television Co., Inc., Bob Radio Corporation, Fox Radio & Television Co., Inc.

PAR. 2. The stock in respondent corporations was issued to respondents, Robert Siegel and Samuel Fox Barsky, or at their direction to the relatives of said respondents, without stated value and for little or no consideration. While the business of respondents is done in the several respondent corporate and company names, it is a continuation of the partnership business conducted under the name Edison-Bell Co., by Robert L. Siegel and Samuel Fox Barsky and is entirely owned, dominated, and controlled by said respondents, Robert Siegel and Samuel Fox Barsky, and their families, who conduct the whole as a single business. No dividends or commissions have been paid by respondent corporations. The respondent individuals do not receive salaries as officers, directors, and stockholders of said corporations.

Said respondents extended their business activities throughout the United States and into foreign countries and applied, through application filed by Edison-Bell Co., Inc., to register with the United States Patent Office the name "Edison-Bell," and the representation of a bell upon which was written in script, within a circle with scroll-like interior decorations, the letters "E. B.," as a trade mark or trade name to designate radio and television receiving sets and radio tubes and like and related products. Thomas A. Edison, Inc., filed opposition to said application for the registration of said name, "Edison-Bell" and the said letters and symbol by respondents and the "Opposition was sustained May 15, 1934" by the United States Patent Office.

PAR. 3. Prior to the organization of the Edison-Bell Co. and the adoption of the company, trade, and brand name "Edison-Bell," respondents operated unsuccessfully under many different company,

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corporate, trade, and brand names, which they changed after the adoption and use of said name "Edison-Bell."

PAR. 4. Respondents were and are engaged in the manufacture and sale of radio receiving sets and parts, including radio tubes, which they manufacture or assemble, or cause to be manufactured or assembled, marked, and branded for them by others at various places in the State of New York and other States at their direction and under their orders. The said radio sets and parts, including radio tubes were branded and labeled or caused to be branded and labeled by respondents or by others for respondents with brands, symbols, letters, and names of their own selection. Respondents sell every make of radio set and radio tube known, both the standard legitimate brands or makes and the spurious, "gyp" brands or makes, including the name "Edison-Bell," which name is formed by the joinder of the surnames of Thomas A. Edison and Alexander Graham Bell, used by respondents as a special company, corporation, trade, and brand name.

PAR. 5. Respondents' products are cheap and of a different class, compared to the products they are designed, marked, and branded to imitate.

PAR. 6. Respondent individuals began the manufacture and sale of radios, radio parts, and radio tubes, prior to 1931, and prior to the organization of respondent corporations, and together with respondent corporations have continued in said business, manufacturing, selling, and shipping said products in interstate and foreign commerce in large quantities. Included among the radio sets and radio tubes so sold by respondents since January 1, 1932, said respondents sold and shipped, and sell and ship, in commerce between and among the several States of the United States and in the District of Columbia and foreign countries, over \$100,000 in sales value annually of said sets and tubes branded or marked "Edison-Bell" together with the representation of a bell on which is written in script in a circle with scroll-like interior decorations the letters "E. B.", which respondents often substituted and installed, and substitute and install, in standard brand radio sets purchased by the respondents from factories and dealers equipped with RCA and other standard brand radio tubes installed in said sets by the manufacturers thereof, which said sets respondents sold and shipped, and sell and ship, in commerce as commerce is above described.

Respondent corporations other than Edison-Bell Co., Inc., often substitute radio tubes branded "Edison-Bell" together with the representation of a bell on which, in a circle with scroll-like interior decorations, is written in script the letters "E. B." for the RCA and

other standard brand makes of tubes that came with the set. Respondent Edison-Bell Co., Inc., conducts a mail order business and sells said radio sets and like products so marked or branded in commerce between and among the several States of the United States and the District of Columbia and foreign countries. The sales are made through the medium of advertisements inserted in newspapers, magazines, pamphlets, circulars, and other periodicals, and letters circulated through the mail in interstate and foreign commerce. Said advertisements and literature all prominently feature the corporation and brand name as hereinabove set out, emphasizing the name "Edison-Bell" and the letters "E. B." and the representation of a bell.

PAR. 7. Respondent individuals, partnerships, and corporations, have been for more than 7 years last past and are now engaged in the manufacture and sale of radio sets and radio tubes in commerce between and among the various States of the United States and foreign countries, causing said radio sets and radio tubes when sold by them to be transported from their several places of business located in the city and State of New York, through and into various other States of the United States, the District of Columbia, and foreign countries, and there is now and has been for more than 7 years last past, a constant current of trade and commerce by said respondents and others in said radio sets, radio tubes, and like products between and among the various States of the United States and the District of Columbia and foreign countries. In the course and conduct of their said business, respondents are in substantial competition with other corporations, partnerships, and persons engaged in the sale of radio sets, radio tubes, and like products in commerce between and among the various States of the United States, the District of Columbia, and foreign countries in interstate and foreign commerce.

PAR. 8. Respondents, in the course and conduct of their said business, adopted in or about the year 1931, and used and now use without authority or consent from the owners and users thereof, as corporation, partnership, and trade names, and as marks, brands, and designations placed upon or caused to be placed upon radio sets, radio tubes, and like products manufactured by respondents or by other manufacturers for respondents and sold by respondents in commerce between and among the several States of the United States, and in the District of Columbia and foreign countries, the following names, letters, and designations, and colorable imitations thereof:

(a) The names "Edison" and "Bell" (together with the representation of a bell on which is written in script within a circle with scroll-

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like interior decorations the letters "EB") used as the company, or trade name "Edison-Bell Company," and as the corporate name, "Edison-Bell Company, Inc.," and as the brand name "Edison-Bell," and the names "Edison International," "Edison Radio Stores, Inc.," and "Edison" in combination with other words, letters, and designations, colorable imitations of said names "Edison" and "Bell."

(b) The name "Bell," and the name "Bell" together with the representation of a bell on which is written in script within a circle with scroll-like interior decorations, a colorable imitation of said "Bell."

(c) The name "Marconi," and the names "Marconi Radio Corporation" and "Marconi-International," colorable imitations of said name "Marconi."

(d) The name "Victor," and the name "Victor International," a colorable imitation of said name "Victor."

(e) The name "Brunswick" and the name "Bronswick," a colorable imitation of said name "Brunswick."

(f) The name "Majestic," and the names "Majestic International," "Majestic Radio Corporation" colorable imitations of said name "Majestic."

(g) The letters "R. C. A.," and the letters "R. S. A." and "R. C. I.," colorable imitations of said letters "R. C. A."

(h) The letters "G. E." in script in a circle with scroll-like interior decorations, and the letters "E. B." in script in a circle with scroll-like interior decorations, a colorable imitation of said letters, "G. E." in script in a circle with scroll-like interior decorations.

All of which said names, letter combinations, and symbols are the exclusive property of and are owned and used by old established concerns in the electric, radio, sound transmission, and like or related industries, as set out in paragraph 9 following.

PAR. 9. The following names, letters, and symbols, when used in the radio world among dealers and the buying public in the United States and foreign countries, have a peculiar meaning and convey to the public mind a significance distinct from other names employed in such trade or radio world, to wit:

(a) "EDISON." The name "Edison" as set out in paragraph (a) above refers to Thomas A. Edison, the great discoverer and inventor in the electric field, and pioneer in the talking machine and radio industry. Thomas A. Edison enjoyed a long and eventful life and his inventions and patents cover a period beginning on or about the year 1868, and extend to the time of his death on or about October 18, 1931. He made many discoveries and inventions and was granted numerous patents in the field of electricity and related arts, including telephony, telegraphy, X-ray apparatus, electric lighting, electric generation,

electrically propelled vehicles, phonographs, radio apparatus, moving and talking pictures, and primary storage batteries.

The electric bulb or incandescent lamp discovered and perfected by said Thomas A. Edison is the foundation principle upon which is based the reception, transmission, control, and utilization of electric energy through space.

Since on or about 1888, the name Edison has been used by Thomas A. Edison, Inc., a corporation of New Jersey, or its predecessors, including the late Thomas A. Edison and other corporations and industries organized by him and thereafter succeeded by said Thomas A. Edison, Inc., and which had and have the exclusive legal right from him to use the name "Edison" as a corporation, company, or trade name, and as a mark or brand on its and their products, including radio sets, phonographs, primary batteries, and storage batteries and other electrical and electrically operated devices and like products sold and shipped in interstate and foreign commerce.

Thomas A. Edison, Inc., is one of the various important trademark registrations of the name "Edison" appearing either as the facsimile of the signature "Thomas A. Edison," or the name "Edison" in type or the representation of said Edison in other forms, all of which trade marks are duly registered and are of record in the United States Patent Office and are in full force and effect, not having been abandoned by Thomas A. Edison, Inc., and which trade marks are of great value to Thomas A. Edison, Inc.

Said Thomas A. Edison, Inc., and its predecessors have continuously used, exploited, and Thomas A. Edison, Inc., now uses and exploits said name "Edison" in said manner throughout the world.

The value of the products, including radio apparatus manufactured and sold by Thomas A. Edison, Inc., and its predecessors, has for many years amounted to millions of dollars annually and Thomas A. Edison, Inc., and its predecessors have spent large sums of money in advertising the name "Edison" and the name "Edison" and their said products branded with said name, including approximately \$2,000,000 in advertising radio and phonograph apparatus alone. The name "Edison" as a corporation, company, or trade name and as a mark or brand on radio sets, primary and storage batteries, electric and like products, is of great value.

Neither the said Thomas A. Edison, Thomas A. Edison, Inc., nor any of the said Edison companies, or his or their agents, representatives, assigns or successors have ever granted permission to respondents to use said name "Edison" in any way.

(b) "BELL." The name "Bell," and the representation of a bell, as referred to in paragraphs (a) and (b) above, when used in con-

nection with sound reproduction and sound transmission in the electric, radio, and related fields, refer to the great electrical engineer and inventor, Alexander Graham Bell, who discovered and perfected sound transmission by the use of wires. The name "Bell," and the representation of a bell are the property of the American Telephone & Telegraph Co., its subsidiaries and associates. Said American Telephone & Telegraph Co. and its subsidiary, Western Electric Co., have used for many years last past (long prior to 1900), and now use the name "Bell" and the representation of a bell as a mark or brand to designate their service and products, and the Western Electric Co. has used for many years last past (long prior to 1931), and now uses the name "Bluebell" and the representation of a bell as a mark or brand to designate dry-bell batteries manufactured and sold by it. Said dry-cell batteries can be and are used in radio sets and like products.

The said products and service of said companies so marked and identified by said name "Bell" and said name "Bluebell" and the representation of a bell, have been for many years last past and are now used in connection with products manufactured, sold, shipped, and extensively advertised in interstate and foreign commerce by said companies.

The value of said service rendered and said products manufactured, sold and shipped annually in interstate and foreign commerce by the said companies and their subsidiaries, so marked, amounts to millions of dollars and the said companies spend and have spent large sums of money in advertising said products so marked and said names "Bell" and "Bluebell" and the representation of a bell are of great value.

Neither said Alexander Graham Bell nor the American Telephone & Telegraph Co., or its subsidiary, the Western Electric Co. or his or their agents, representatives, successors, or assigns have granted permission to the respondents to use the name "Bell" or the representation of a bell in any manner, nor have they abandoned the use thereof.

(c) "MARCONI." The name "Marconi," as set out in paragraph (c) above, refers to and is recognized as the name of Guglielmo Marconi, the great engineer and electrician, who first perfected the appliances used in *space* telegraphy or radiography, and the application of electric waves to actual telegraphy and the inventor of various electrical and radio devices.

Marconi Wireless Telegraph Co. of America acquired from said Guglielmo Marconi the exclusive right to the use and exploitation of all of the said Marconi patents and inventions including the use

of the name Marconi in and throughout the United States and its territories and possessions. In 1919 said Marconi Wireless Telegraph Co. of America sold, transferred, and assigned to Radio Corporation of America all of its right, title, and interest in and to said Marconi patents and inventions, including the right to the use of the name "Marconi" in connection therewith. The said name "Marconi" in and throughout the United States and its territories and possessions is the property of the Radio Corporation of America and its subsidiaries, and said name "Marconi" has great value. Said Radio Corporation of America, since 1919, has had and has the exclusive right to the use of the said name "Marconi," used in said manner, and has made use of and extensively advertised and exploited and uses and advertises and exploits the said name "Marconi" as a mark or brand upon wireless telegraph sets and related products made, used, sold, and shipped in interstate commerce.

The value of the products, including radio sets and related products manufactured and sold annually by Radio Corporation of America and its subsidiaries and the service of said company, amounts to millions of dollars, and the said company and related industries spend and have spent great sums of money in advertising their products and service.

Neither said Guglielmo Marconi, Marconi Wireless Telegraph Co. of America or Radio Corporation of America, his or their agents, representatives, successors, or assigns have ever granted permission to the respondents to use the name "Marconi" in any way, nor have they abandoned the right to the use thereof.

(d) "VICTOR." The name "Victor," as set out in paragraph (d) above refers to and is a part of the name of the Victor Talking Machine Co. and of the RCA Victor Co., a subsidiary of the Radio Corporation of America. The Radio Corporation of America obtained control of the Victor Talking Machine Co. on or about March 15, 1929, and the right to the use of the name "Victor." Said Victor Talking Machine Co. and said Radio Corporation of America, RCA Victor Co., and other subsidiaries of Radio Corporation of America have used for many years last past (long prior to 1921), and now use, the name "Victor" as part of said corporate names and as a mark or brand on phonographs, radio sets, and like products manufactured and sold by said companies in interstate and foreign commerce. The annual sale of said products by said companies amounts to many millions of dollars and said companies have spent and spend millions of dollars annually in advertising said products; and said name "Victor" is a great value in the electric, radio, musical and like industries.

Neither said Victor Talking Machine Co., Radio Corporation of America or any of the subsidiaries of said company, or their agents, representatives, successors, or assigns have granted permission to the respondents to use said name "Victor" in any manner, nor have they abandoned the use thereof.

(e) "BRUNSWICK." The name "Brunswick" (of which the name "Bronswick" is a colorable imitation), as set out in paragraph (e) above, was used as a part of the name Brunswick-Balke-Collender Co., a large manufacturer of various musical and sound transmitting instruments, including radio sets and combination radio and talking machine sets and like products. Said corporation assigned to Warner Bros. Pictures, Inc., together with other assets, the right to the use of said name "Brunswick." Said Warner Bros. Pictures, Inc., organized Brunswick Radio Corporation in 1933. Said companies for many years last past (long prior to 1921), have used and now use the name "Brunswick" as part of their corporate name and as marks or brands on talking machines, radio sets, and like products manufactured, sold, shipped, and extensively advertised in interstate and foreign commerce. Said companies sell annually millions of dollars worth of said products so marked and spend large sums of money in advertising said name and said products and said name "Brunswick" is of great value.

Neither said Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., or its subsidiaries, or their agents, representatives, successors, and assigns have ever granted permission to respondents to use said name "Brunswick" (or Bronswick) in any manner, nor have they abandoned the use thereof.

(f) "MAJESTIC." The name "Majestic" as set out in paragraph (f) above is a name used by Grigsby-Grunow Co. and has been used for many years (long prior to 1921), as a mark or brand on radio sets and like products manufactured, sold, shipped, and extensively advertised by said company in interstate and foreign commerce. Said name "Majestic" is now vested in Frank M. McKey as trustee in bankruptcy for the creditors of said Grigsby-Grunow Co. and is an asset of great value. Said Grigsby-Grunow Co. sold over four million of said radio sets and spent approximately \$25,000,000 in advertising said name "Majestic" and its products so marked, and said name "Majestic" is of great value.

Neither said Grigsby-Grunow Co. nor said Frank M. McKey, its or his agents, representatives, successors, or assigns have ever granted permission to respondents to use the name "Majestic" in any manner, nor have they abandoned the use thereof.

(g) "RCA." The letters "RCA" as set out in paragraph (g) above, stand for and represent Radio Corporation of America. The letters "RSA" and "RCI" are colorable imitations of the letters "RCA." The Radio Corporation of America, individually and through its subsidiaries, among its many activities, manufactures and sells radio sets and like products and conducts a radio service in interstate and foreign commerce. The Radio Corporation of America for many years last past (long prior to 1921) has used and now uses the letters "RCA" to designate said service, and the said company, and the products manufactured and sold by said company and its subsidiaries. The said service and products of said Radio Corporation of America, and its subsidiaries, manufactured (transacted) and sold annually in interstate and foreign commerce so marked or designated, amount to millions of dollars and said products and service are extensively advertised by said company and its subsidiaries, and the letters "RCA" designating said name and products are valuable. The Radio Corporation of America and its subsidiaries, agents, representatives, successors, or assigns have never granted to respondents permission to use the letters "RCA" or the name Radio Corporation of America in any way, nor have they abandoned the use thereof.

(h) "EB." The letters "EB" as set out in paragraphs (a) and (h) above, when used in the radio, electric, and sound transmission fields, and as a mark or brand on radio sets and like products, stand for and represent the surnames of Thomas A. Edison and Alexander Graham Bell. Said names are owned and used by the respective persons, companies, and corporations designated in subparagraphs (a) and (c) of paragraph 9, and said individuals or corporations have never granted permission to the respondents to use the initials "EB" in any manner.

(i) "GE." The letters "GE" as set out in paragraph (h) above, represent General Electric Co. "GE" (written in script) in a circle with scroll-like interior decorations, is the property of the General Electric Co., and has been and is used and extensively advertised by General Electric Co. to designate said company's name and as a mark or brand to designate products, including radio sets, radio tubes, and like products manufactured, sold, and shipped in interstate and foreign commerce by said company. Said company has sold for many years last past (long prior to 1921) and sells millions of dollars worth annually of its said products and extensively advertises said products including said mark. The letters "EB" (in script) in a circle with scroll-like decorations used by respondents in the radio, electric, sound transmission, and like industries, is a colorable

imitation of the letters "GE" in a circle with scroll-like decorations used by General Electric Co.

Said General Electric Co., its agents, representatives, successors, and assigns, have never granted permission to respondents to use said letters or symbol in any manner, nor have they abandoned the use thereof.

The said names, letters, and symbols used by respondents as set out in paragraph 8 hereof, closely resemble in size, typographical arrangement, and general appearance, the names, letters, and symbols lawfully owned and used by the persons, partnerships, and corporations as set out herein. The appearance of said names, letters, and symbols upon radio sets and parts, including radio tubes, and in connection with the offering for sale and sale of said products by respondents in the manner and form as set out in said paragraph, had and has the capacity and tendency to cause confusion and caused and causes confusion in the trade and enabled and enables respondents to sell to the public the said radio sets and parts, including radio tubes as and for radio sets, radio tubes, and like products manufactured and sold in interstate and foreign commerce by other persons, partnerships, and corporations, as set out herein.

Said names, letters, and symbols are the names and designations of well-known and long established individuals, companies, and corporations, and are standard brands and symbols when used as company, corporate, and trade names, and as marks and brands on radio sets, radio tubes, batteries, electrical, and like products, and said products so marked have a fixed and stable value in the trade and industry generally throughout the United States and foreign countries. The purchasing public relies upon said well-known brands marks, and symbols when used on radio sets, radio tubes, batteries, electrical, and like products and in said industries as indicating high standard, reliable, and genuine products. The use of such names, letters, and symbols influences the purchase of said products and increases sales. The number of dealers in said products so marked, increase sales value. The said names, letters, and symbols attached to said products have value to the thousands of dealers engaged in the sale and distribution of said standard brand products. The said names, letters, and symbols are valuable to those persons, partnerships, and corporations owning them, and who have used and now use and employ them in commerce.

Because of the popularity of the name "Edison" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Marconi" and the products bearing this name, manufactured and sold by the lawful

owners thereof; and because of the popularity of the name "Bell" and the representation of a bell, and the service and products bearing this name and symbol, manufactured and sold or furnished by the lawful owners thereof; and because of the popularity of the name "Victor" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Brunswick" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the name "Majestic" and the products bearing this name, manufactured and sold by the lawful owners thereof; and because of the popularity of the letters "RCA" and the products bearing these letters, manufactured and sold by the lawful owners thereof; and because of the popularity of the monogram of letters "GE" (in script) in a circle with scroll-like interior decorations, and the products bearing these letters and symbol, manufactured and sold by the lawful owners thereof; the use by respondents of said names, letters, and monograms, and simulations thereof, has led and has the capacity and tendency to lead the public to believe that the products sold by respondents and so marked or identified are the products of said well-known respective companies or interests hereinabove referred to and identified and results in the appropriation by the respondents of the good will of, and an unfair diversion of business from said respective competitor companies and interests, and an unfair diversion of business from other competitors who do not resort to such practices, to the injury of the owners of said marks, letters, and symbols, and of said competitors, and to the prejudice and injury of the public.

PAR. 10. The placing and use of said names, letters, symbols, marks, and brands as set out in paragraph 8 hereof, on radio sets, radio tubes, and like products offered for sale and sold by respondent individuals, partnerships, corporations, and others, without authority or right, has the capacity and tendency to deceive and deceives the purchasing public and is unfair to and injures competitors who do not resort to such practices. Such misbranding damages and injures the lawful owners thereof and is injurious to the industry and the public.

The purchasing public buying radio sets, radio tubes, and like products marked or branded with the said well-known names, letters, and symbols are of a common mind or belief, regardless of the selling price or of the source of supply, that said products are manufactured and sold by the lawful owners and users of said names, marks, brands, letters, and symbols, and when said names, marks, brands, letters, and symbols are placed upon radio sets, radio tubes, and

like products, such products are accepted as the products of those who have lawfully used and now use such names as marks, brands, letters, and symbols upon like products as set out in paragraph 9 hereof. The name or brand being depended upon, influences the sale of said products.

Members of the purchasing public have purchased radio sets, radio tubes, and like products branded and sold to the trade by respondents and others, which products were imitations of or less than the genuine products entered in trade by the lawful owners and users of said standard names, and have been deceived in such purchases.

Dealers in radio sets, radio tubes, and like products have been forced to misbrand or place standard brand names and symbols on like products sold by them, that were not genuine, in order to meet competition of respondents and other dealers engaged in manufacturing and selling said misbranded products.

The manufacture, sale, and delivery by respondents of radio sets, radio tubes, and like products, marked and branded with the names, letters, and symbols hereinabove designated of well-known manufacturers and lawful users of said names, marks, brands, and symbols, without authority or consent of the owners and lawful users thereof, places in the hands of others, to whom said products are sold, the means whereby injury might be and is done to competitors dealing in the genuine products honestly marked. Injury to manufacturers and dealers in the legitimate products is suffered by the sale by respondents of products falsely marked, sold and shipped in interstate and foreign commerce. Injury to the lawful owners and users of standard brands, names, marks, and symbols, is suffered because of the manufacture, sale, and competition of respondents' said products.

PAR. 11. Respondents, in the course and conduct of their business of manufacturing, assembling, selling, and shipping said radio sets, radio tubes, and like products in interstate and foreign commerce, placed or caused to be placed upon the products, the aforesaid standard brand names, letters, and symbols, by means of name plates, marks, and brands attached to said products and upon the boxes, cartons, or containers in which they were packed and shipped. The said standard names, marks, brands, and symbols were usually displayed in large, bold lettering, easily discernible, while the names of respondents' corporations or business organizations, manufacturing and selling said products, were in small letters, hardly discernible.

In selling and shipping said radio sets, radio tubes, and like products in interstate and foreign commerce, respondents advertise said company, corporate, and trade names and said products so marked, in newspapers, magazines, and other bulletins and periodicals cir-

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culated through the mails in interstate and foreign commerce. Said advertisements are [so] worded as to convey to the mind of the purchasing public the impression that the products so advertised are the genuine standard makes or brands, contrary to the facts.

CONCLUSION

The aforesaid acts and practices of said respondents, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondents' 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 and the amended and supplemental complaint of the Commission, the answers of the respondents, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaints and in opposition thereto, and the brief filed by Carrel F. Rhodes, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said 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, Edison-Bell Co., Inc., Fox Radio & Television Co., Inc., Atlas Television Co., Inc., York Television & Radio Corporation, Bob Radio Corporation, Music Masters Corporation, Fox Radio Corporation, their officers, agents, representatives, and employees, and Robert Siegel, Aaron L. Siegel, Samuel Fox Barsky, and Simon Barsky, their agents, representatives, and employees, operating individually or operating under the trade name Edison-Bell Co., or any other trade name or designation in connection with the offering for sale or sale in interstate and foreign commerce and in the District of Columbia of radio sets, radio tubes, and like devices, appliances, or products, do hereby cease and desist from:

(1) Representing directly or indirectly, through advertisements, trade promotion literature, in sales talks, and through corporation, company, or trade names, marks, or brands, or in any other manner whatsoever, that the radio sets, radio tubes, and like devices, ap-

pliances, or products manufactured or assembled for or by, and offered for sale or sold by any of said respondents, are the radio sets, radio tubes, appliances, or products manufactured, assembled, and sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Co. of America, Radio Corporation of America, Victor Talking Machine Co., Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Co., or Frank M. McKey, trustee for the creditors of Grigsby-Grunow Co., General Electric Co., or the agents, representatives, successors, or assigns of any of said persons, partnerships, or corporations.

(2) Representing, directly or indirectly, through the use of the names "Edison," "Edison-Bell," "Edison-Bell Company," "Edison-Bell Company, Inc.," "Edison Radio Stores, Inc.," "Edison International," "Bell," "Marconi," "Marconi Radio Corporation," "Victor," "Brunswick," "Bronswick," "Majestic," "Majestic Radio Corporation," "Majestic International," "Radio Corporation of America," "General Electric Company," or through the use of the letters "R. C. A.," "R. S. A.," "R. C. I.," "G. E.," or "E. B.," or through the representation of a bell, alone or in combination or connection with any other word or words or letters, symbol or symbols, that the radio sets, radio tubes, and like devices, appliances, or products manufactured or assembled for or by and sold by any of said respondents are radio sets, radio tubes, devices, appliances, or products manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Co. of America, Radio Corporation of America, Victor Talking Machine Co., Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Co., or Frank M. McKey, trustee for creditors of Grigsby-Grunow General Electric Co., or the agents, representatives, successors, or assigns of any of said persons, partnerships, or corporations.

(3) From applying to, attaching to, or causing to be applied or attached to or used on any radio sets, radio tubes, or other devices, appliances, or like products, manufactured or assembled or sold by respondents, escutcheon plates, brands, marks, or other devices, bearing the names or designations "Edison," "Edison-Bell," "Edison-Bell Company," "Edison-Bell Company, Inc.," "Edison Radio Stores, Inc.," "Edison International," "Bell," or the representation of a bell, "Victor," "Brunswick," "Bronswick," "Majestic," "Majestic

Order

Radio Corporation," "Majestic International," "Marconi," "Marconi Radio Corporation," "Radio Corporation of America," "General Electric," "General Electric Company," or the letters "R. C. A.," "R. S. A.," "R. C. I.," "G. E.," or "E. B.," alone or in combination or conjunction with any other word or words or with any other letter or letters, symbol or symbols, so as to import or imply that the said radio sets, radio tubes, or other devices, appliances, or like products, manufactured or assembled and sold by respondents are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Co. of America, Radio Corporation of America, Victor Talking Machine Co., Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Co., or Frank M. McKey, trustee for creditors of Grigsby-Grunow Co., General Electric Co., or the agents, representatives, successors, or assigns or any of said persons, partnerships and corporations.

It is further ordered, That said respondents shall within 30 days from notice hereof, file with this Commission a report in writing, stating in detail the manner and form in which they have complied with this order.

Complaint

23 F. T. C.

IN THE MATTER OF
JACK DIAMOND, TRADING AS DIAMOND KNITTING
MILLS

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

Docket 2645. Complaint, December 5, 1935—Decision, July 17, 1936

Where an individual engaged in sale and distribution of knitted garments, neckwear, and other wearing apparel, made for him in factories or mills owned by others, on a contract basis at a specified price per dozen, from yarn furnished by him, and under complete supervision and control of such others, and not to any extent under control of said individual, who neither owned, operated nor controlled any mill, plant, or factory making or knitting products thus dealt in by him—

Used, as a trade name, name including words "Knitting Mills" on letterheads, order blanks, and otherwise; with capacity and tendency to mislead and deceive many customers and prospective customers into belief that he owned, operated, or controlled a mill or mills making said products, and into erroneous belief that in purchasing same they were buying directly from manufacturer and were thereby eliminating profits of middlemen and obtaining various other advantages not to be had by buying goods from others than the manufacturer, and with tendency to divert business unfairly from, and otherwise injure and prejudice competitors, among whom there are those who make the garments sold by them and rightfully represent themselves as the manufacturers thereof, and others who purchase products dealt in and resell same without representing themselves as manufacturers thereof:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. David M. Engelson, 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 Jack Diamond, trading as Diamond Knitting Mills, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public, the said Federal

Complaint

Trade Commission hereby issues its complaint against the respondent and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Jack Diamond, is an individual trading under the name and style of "Diamond Knitting Mills," with his principal place of business located in the city of New York, State of New York. That said respondent is and has been for about six years last past engaged in selling knitted garments, neckwear, and other apparel, to purchasers located in a State or States other than the State of New York, and pursuant to such sales and as a part thereof causes and has caused said knitted garments, neckwear, and other apparel so sold to be transported from his place of business in the State of New York into and through States other than the State of New York to said purchasers in the State or States in which they are located.

PAR. 2. That during all of said 6 years last past there have been and now are other persons, firms, and corporations engaged in the business of manufacturing and selling knitted garments, neckwear, and other apparel similar to those sold by respondent, and pursuant to such sales, and as a part thereof, have caused such commodities to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 3. That the said respondent, Jack Diamond, in the course and conduct of his business as described in paragraph 1 hereof, adopted as and for his trade name the words "Diamond Knitting Mills," which trade name containing the words "Knitting Mills" the said respondent has used and now uses on his letterheads, order blanks, and otherwise in soliciting the sale of and selling his products in interstate commerce as aforesaid; that in truth and in fact the said respondent has not manufactured and does not manufacture the products so sold by him; and that the said respondent has not controlled and does not control the mill or mills or factory or factories in which the products sold by him are knitted or manufactured, but, on the contrary, fills his orders with products which are knitted or manufactured in a mill or factory or mills or factories which he neither owns, operates, nor controls.

PAR. 4. That the use by the respondent of the words "Knitting Mills" in his trade name as aforesaid has the capacity to mislead and deceive and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that respondent operates or controls a mill or mills in which the products sold by respondent as aforesaid are manufactured and that persons buying garments sold by respondent are buying said garments directly from

Findings

23 F. T. C.

the mills and from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. That there are among the competitors of respondent referred to in paragraph 2 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof; that there are others of said competitors who purchase the garments in which they deal and resell same and who in nowise represent that they manufacture said garments; and that the aforesaid acts and practices of the respondent in representing that he owns or operates mills in which the products sold by him are manufactured tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. That the aforesaid acts and things done by the 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 the said Act of Congress hereinabove entitled.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 5th day of December 1935, issued and served its complaint in this proceeding upon the respondent, Jack Diamond, an individual trading as Diamond Knitting Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by David M. Engelson, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jack Diamond, is an individual trading as Diamond Knitting Mills, with his principal place of business located in the city of New York, State of New York. He is now, and has been for several years last past, engaged in the sale and distribution of knitted garments, neckwear, and other wearing apparel to purchasers located throughout the various States of the United States. He has caused, and causes, his said products when sold by him to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York. He is now, and has been at all times hereinafter mentioned, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 2. Respondent has adopted, and at all times hereinafter mentioned has used and now uses, as and for his trade name the words "Diamond Knitting Mills" in connection with the offering for sale and sale of his products in commerce among and between the various States of the United States, and has caused his said trade name to be used on his letterheads, order blanks, and otherwise, in soliciting the sale of and selling his said products in interstate commerce. In and by his trade name, through the use of the word "Knitting" and of the word "Mills" respondent represents that he owns, operates, or controls a mill and that the products sold by him are manufactured by him.

Respondent did not and does not knit, make, or manufacture the products sold and distributed in interstate commerce by him; nor did he nor does he own, operate, or control any mill, plant, or factory in which said products are or were knitted, made, or manufactured. All of the products sold by him are and were manufactured in factories or mills owned by others and such products are made and were made from yarn furnished by respondent and were and are made on a contract basis at a specified price per dozen. Those making said products for respondent at a specified price per dozen have had and have complete supervision and control over their factories and respondent does not have and did not have any control of any nature over said factories.

PAR. 3. There is a preference on the part of certain retail merchants of knitted garments and other wearing apparel to deal directly with the mill owner and manufacturer thereof. There is an impression and belief existing among certain said retail merchants that

they can buy goods at a cheaper price and that they can eliminate middlemen's profits by dealing directly with the mill owner or manufacturer.

The use by the respondent of the words "Knitting" and "Mills" in his trade name as aforesaid has and has had the capacity and tendency to mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that respondent owns, operates, or controls a mill or factory, or mills or factories, in which the products sold by the respondent as aforesaid are manufactured, and into the erroneous belief that persons, firms, partnerships, and corporations buying said garments sold by respondent are buying said garments directly from the manufacturer thereof and are thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same and who do not represent that they manufacture said garments.

The aforesaid acts and practices of the respondent, in which he represents that he owns, operates, or controls mills or factories in which the products sold by him are manufactured, tend to unfairly divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The aforesaid acts and practices of respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of competitors of respondent 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 before the Federal Trade Commission upon the complaint of the Commission, and the testimony and evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and briefs filed herein,

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, Jack Diamond, an individual trading as Diamond Knitting Mills, his agents, representatives, and employees in connection with the offering for sale or sale of knitted goods in interstate commerce, cease and desist from:

Representing through his trade name by the use of the words "Knitting" or "Mills" alone or in connection or conjunction with any other word or words, or in any other manner whatsoever, that he owns, operates, or controls a mill or factory in which his said products are knitted or manufactured.

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

IN THE MATTER OF
GENERAL DISTILLERS, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2402. Complaint, May 22, 1935—Decision, July 18, 1936

Where a corporation engaged as rectifier and wholesaler of liquors, and in making gin by redistillation of purchased alcohol over juniper berries and other aromatics, and neither owning, operating nor controlling any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, other than still for making of gin as aforesaid, nor distilling any beverage, but purchasing and bottling the whiskies, gins, and other spirituous beverages dealt in by it, and selling same in competition with genuine distillers, investment and expenses of which are, in general, greater than those of rectifiers, and with others engaged like itself, and who respectively truthfully used words "Distillery", "Distillers", "Distilleries", or "Distilling" as part of their corporate names and on stationery and labels, or did not thus use such words—

Displayed, on stationery and on labels attached to bottles in which it sold and shipped its said beverages, word "Distillers", as included in its corporate name, together with such words as "Distilled and bottled by", or "Bottled by", or "Made by", as case might be, and, on back labels on whiskey bottles, name of actual distiller thereof;

With effect of misleading and deceiving dealers and purchasing public into belief that whiskies, etc., sold by it were by it made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, among a substantial portion of which there is a preference for purchase of liquors bottled by actual distillers and manufacturers thereof, to buy said whiskies, etc., thus bottled and sold by it, and of thereby diverting trade to it from competitors who do not, by their corporate name or in any other manner, misrepresent themselves as manufacturers by distillation from mash, wort, or wash, of whiskies, gins and other spirituous beverages, and with capacity and tendency so to mislead, etc., and to induce dealers and purchasing public to buy its products in preference to those of truthful competitors; to the substantial injury of substantial competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Clyde C. Sherwood, of San Francisco, Calif., for respondent.

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.

Complaint

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 General Distillers, Ltd., 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 in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of California with its offices and principal place of business in the city of San Francisco in said State. It is now, and has been since its organization in October 1933, engaged in the business of a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among

the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and on labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and

does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of California with its offices and principal place of business in the city of San Francisco in said State. It is now, and has been since its organization in October 1933, engaged in the business of a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in

the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PARAGRAPHS 2, 3, 4, AND 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

PAR. 6. Under and pursuant to title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, c. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace, as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture, pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a code of fair competition for the distilled-spirits-rectifying industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a code of fair competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said Code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of the said

Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said code of fair competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of article V of said code became and still is one of the standards of fair competition for the distilled-spirits-rectifying industry and is binding upon every member of said Industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry;

SECTION 1. False Advertising.—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

PAR. 7. The use by respondent of the word "distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort, or wash and that the spirituous beverages by it so sold and transported have been bottled by the original distillers thereof, all contrary to the provisions of section 1, article V, of the code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the distilled-spirits-rectifying industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1

hereof, are in violation of section 3 of title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 22, 1935, issued and on May 27, 1935, served its complaint in this proceeding upon respondent General Distillers, Ltd., a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, heretofore duly designated by it; and by PGad B. Morehouse, attorney for the Commission thereafter by the Commission duly substituted to take testimony in the place and stead of said W. W. Sheppard; and in defense of the allegations of the complaint by Clyde C. Sherwood, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. General Distillers, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of California as a rectifier and wholesaler of liquors since February 1, 1934, having its principal office and place of business at 136 Front Street, San Francisco, Calif. It purchases and bottles whiskies, gins, and other spirituous beverages and sells the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be

transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Rectifying, in the distilled-spirits-rectifying industry, means the mixing of whiskies of different ages, or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they came from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the _____ Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery, or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by _____ Company." If, in the

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distillery's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by _____ Company." Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-156" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's permit, and at least one large distiller, namely, Hiram Walker & Sons, uses its "R number" exclusively. Knowledge of these details is not widespread among the retail trade, and is very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

It is not always possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

PAR. 3. Respondent in the course and conduct of its business uses its name printed on its stationery and on the labels attached to the bottles in which it sells and ships its said beverages. The name on its labels for gins which it produces by redistillation of neutral spirits with aromatics is preceded by " * * * Distilled and Bottled By." On its whiskey labels the name is preceded by the words "* * * Bottled By" and white labels on the back of its whiskey bottles give the name of the actual distiller of the whiskey. On the labels for its liqueurs and Pisco John Punch the name is preceded by the words "Made By."

Respondent is a rectifier and not a distiller. It does not own, operate, or control any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, and it does not distill any beverage. It has a still which it uses in making gin by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, but this redistillation does not make respondent a distiller as defined by United States Code, title 26, section 241, regulating internal revenue, nor as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been and still were actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "dis-

tilling" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of making beverages by original distillation from grain, fruit, or vegetable mash.

In general the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondent produces its gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels: "Distilled by _____ Distillers." There are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondent, yet it is all done in a distillery and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumer with respect to such products.

Existing regulations and regulations proposed under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers" or "distilling" as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and

individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. A substantial portion of the purchasing public does prefer to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and such representation is a misrepresentation in fact, and has a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondent's products in preference to the products of truthful competitors.

The opinion and preference of the consuming public is illustrated by the following brief references to representative testimony on this point:

A person that distills liquor, I would imagine, would attempt to put forth a better product because of the fact his reputation as a distiller would be at stake, whereas, a person who blends liquors and sells them just as a distributor, I would imagine, that if the liquor was not just exactly right, he would say his reputation as a manufacturer was not concerned;

Generally speaking, I prefer to buy it from the distiller, I say that generally; if you happened to know who the rectifier was and he shows you what he was blending, then you would know what distiller made the product and what was going into the blend; in that case you might be just as well satisfied, but, generally speaking, "distillery" would mean more to me;

If he saw the word "distillers" in the firm name of a concern on its labels, that would influence him to purchase it over another product which did not have on it those words, because he would have confidence that that firm would be more certain to deliver a product that had no deleterious matter in it for beverage purposes, and he would take it that such firm had actually distilled and bottled it and that would be his reason for buying from them.

The testimony clearly showed and the Commission finds that a prestige attaches in the minds of the wholesale trade to the distiller, and that that prestige is an advantage in overcoming sales resistance; that in the mind of the wholesale trade and the public, the belief that a distiller controlling the making of such products from start to finish, with all the ingredients going into them within its own establishment, is an advantage, together with uniformity; and that the use of the word "distilling" or "distiller" in a trade or corporate name of a concern gives it an advantage over concerns who do not pursue or practice such characterizations, and who do not purport to be manufacturers when they are not.

The Commission therefore finds that the representations of respondent through use of the word "Distillers" in its corporate name as aforesaid is calculated to and has the capacity and tendency to

and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The complaint was issued in two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act, and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of section 3 of title I of the National Industrial Recovery Act, which was invalidated by the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation et al v. United States*.¹ For that reason the Commission has dismissed the complaint as to count 2 thereof.

PAR. 7. Because of existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), and which regulations are presently expected to become effective as to August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may sell such resulting product "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The practice of the said respondent under the conditions and circumstances hereinbefore described, were to the prejudice of the public, and respondent's competitors, and were unfair methods of competition in interstate commerce, constituting 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."

¹ 295 U. S. 495.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on May 22, 1935, and served on May 27, 1935, the answer of the respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission heretofore duly designated by it, and before John W. Addison, a substituted examiner of the Commission thereafter duly designated by it to take testimony in the place and stead of the said W. W. Sheppard, and testimony and evidence taken in opposition thereto, briefs filed herein, oral arguments of the counsel aforesaid having been waived; 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 General Distillers, Ltd., a corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, or other spirituous beverages (except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics) do cease and desist from:

Representing, through the use of the word "Distillers" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins or other spirituous beverages; or (b) that the said whiskies, gins or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates or controls a place or places where any such products (including gins) are by it manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

It is further ordered, That the said complaint be and the same is hereby dismissed as to count two thereof.

Syllabus

IN THE MATTER OF

JOHNSON WHOLESALE PERFUME CO., INC., AND ALSO
TRADING AS ALLEN'S CUT-RATE SHOPS AND ALLIED
CUT-RATE SHOPS

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

Docket 2463. Complaint, June 27, 1935—Decision July 21, 1936

Where a corporation engaged in sale and distribution of cosmetics and toilet preparations, through twenty retail stores owned by it in several States; in pursuance of a conspiracy and understanding falsely to label, brand, and designate cosmetics for sale and distribution in interstate commerce and to offer and sell such products, thus labeled, branded, and designated, to consuming public, entered into by it with a private brand manufacturer of such preparations, who sold some fifty items of said various products, made to its specifications, and marked or labeled and designated as requested by it, or in bulk for its marking or labeling—

- (a) Sold certain nail polishes, finishing lotions, astringents, face powders, and wave sets in packages and containers labeled, as case might be, "D'Vora Lasting Nail Polish. Mme. D'Vora, Paris, New York", or "Arlene Richards * * * Finishing Lotion * * * Arlene Richards Laboratories, Paris, New York", and through its servants, agents, and employees in its various stores, falsely represented that said preparations were made in Paris, France, and imported into the United States, facts being they were neither made nor compounded in Paris or in France, and there was no such person as Arlene Richards nor were there any Arlene Richards Laboratories in existence;
- (b) Represented through labels affixed to containers of its said Arlene Richards Tissue Cream, that said preparation was a food for skin and tissues and helped nature to fill out hollows, lines and wrinkles, facts being that a face cream can only have therapeutic value or effect when it serves as a vehicle for medicinal agents therein capable of producing such effect, and said cream, as mixed and compounded, did not serve as a vehicle for or contain any medicinal agent of such a nature and was not a food for skin tissues and did not help nature, as above represented;

With capacity and tendency to mislead and deceive purchasing public into erroneous belief that said cosmetics were made or compounded in Paris or in France, and imported to the United States, and that aforesaid tissue cream was a food for skin and tissues and helped to fill out hollows, etc., and to induce purchasing public to buy said products because of erroneous beliefs, thus engendered, and in response to preference of many of consuming public for cosmetics in fact there made, and long favorably regarded by trade and by consuming public throughout United States, and with effect of placing in hands of its clerks an instrument or means whereby they might pass off and sell said products as French, or made in France, and with tendency unfairly to divert business from and otherwise injure competitors, including many who deal in and sell cosmetics made in

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France and imported therefrom and rightfully and truthfully represent said products as such, and others who deal in and sell such articles made and compounded in United States without in any manner representing same as made or compounded in Paris or France, and others who in no manner misrepresent place of manufacture, origin, or virtues or functions of their said products:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and of competitors of said corporation and its said private brand manufacturer-vendor, and constituted unfair methods of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. Astor Hogg for the Commission.

Levy & Levy, of New Haven, Conn., 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 Johnson Wholesale Perfume Co., Inc., a corporation, also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, 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, Johnson Wholesale Perfume Co., Inc., a corporation, and also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in the city of New Haven, in said State. It is now and for more than 1 year last past has been engaged in the sale and distribution of perfumes, cosmetics, and other toilet preparations, through 16 retail stores which it owns, located in the States of Rhode Island and Connecticut and in the Commonwealth of Massachusetts.

Jay H. Schmidt is an individual trading under his own name and under the name and style Jay H. Schmidt Perfumer, with his factory and principal place of business located in the city of New York, State of New York. He is now and for more than 1 year last past has been engaged in the manufacture and sale of perfumes, cosmetics, and other toilet preparations. His sales are to wholesalers and retailers located throughout the various States of the United States and in the District of Columbia and, pursuant to such sales,

shipment is made from his place of business in the State of New York into and through various States of the United States other than the State of the point of origin of such shipment, and in the District of Columbia. For more than 1 year last past said Jay H. Schmidt has sold and shipped and still sells and ships his said products from his factory in the State of New York to respondent in the city of New Haven in the State of Connecticut, and said respondent, during said period of time, has reshipped and still reships said products from time to time to its said retail stores.

There are in the United States other persons, firms, and corporations engaged in the manufacture and sale and distribution of similar competing products, who, pursuant to such manufacture and sale, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other persons, firms, and corporations the respondent and Jay H. Schmidt, an individual trading under the name and style of Jay H. Schmidt Perfumer, are, and at all times hereinafter mentioned have been in active and substantial competition.

PAR. 2. In the course and conduct of the business of respondent and Jay H. Schmidt Perfumer, as described in paragraph 1 hereof, they have unlawfully, knowingly, and with intent so to do, engaged in a conspiracy, common understanding, combination, and agreement between and among themselves, to label, mark, brand, and designate perfumes, cosmetics, and other toilet preparations for the purpose of sale and distribution in commerce between and among various States. In pursuance of such conspiracy, common understanding, combination, and agreement theretofore entered into as aforesaid, said Jay H. Schmidt Perfumer, in manufacturing the products which he sold to respondent, at the instance and request and under the direction of respondent has placed upon said products labels bearing the words and designations hereinafter listed, and after so labeling, marking, and designating such products, the said Jay H. Schmidt Perfumer, has sold and shipped said products from his place of business in the State of New York to said respondent, located in New Haven, Conn., and said respondent, after receiving said products as aforesaid, has sold and distributed, and does sell and distribute said products so labeled, marked, and designated, in competition with other persons, firms, and corporations selling similar products in commerce between and among the various States of the United States.

Pursuant to such conspiracy, combination, agreement, and common understanding theretofore entered into, as aforesaid, and in the

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course of and for the purpose of promoting the sale and distribution of said products in commerce, from said manufacturer, Jay H. Schmidt Perfumer, through respondent's stores to the general consuming public, respondent in like manner has caused and continues to cause quantities of said products to be labeled, branded, designated, and marked, and to be sold in competition, as aforesaid.

PAR. 3. Said labels, marks, brands, and designations used by respondent and said Schmidt as above alleged, read as follows:

- D'Vora Lasting Nail Polish, Mme. D'Vora, Paris, New York;
 D'Vora Hand Lotion, Mme. D'Vora Laboratories, New York;
 Arlene Richards Facial Aesthetics, Finishing Lotion, Arlene Richards Laboratories, Paris, New York;
 Arlene Richards Tissue Cream . . . A food for skin and tissues, helping nature to fill out hollows, lines, and wrinkles. Arlene Richards Laboratories, New York;
 Arlene Richards Facial Aesthetics Cleansing Cream . . . Arlene Richards Laboratories, New York;
 Arlene Richards Astringent—Arlene Richards Laboratories, Paris, New York;
 Dr. La Morse Glycerine and Rose Water, Dr. La Morse Laboratories, New York;
 Genuine Dr. La Morse Antiseptic . . . Dr. La Morse Laboratories, New York, U. S. A.;
- Dr. La Morse Pure Glycerine, Dr. La Morse Laboratories, New York.

The labels, marks, brands, and designations made and caused to be made by respondent and said Jay H. Schmidt Perfumer, as hereinabove alleged, are each and all false and misleading in these respects, to wit:

(1) Neither the said Jay H. Schmidt Perfumer nor the respondent had or has any factory or laboratory in Paris, nor were said products manufactured or compounded in Paris, but, on the contrary, were manufactured and compounded in the United States.

(2) Respondent has and had no factory or laboratory in New York.

(3) The "tissue cream" referred to did not and does not possess such properties as to be a food to the human skin or tissues and neither does it nor will it help nature to fill out hollows and wrinkles.

(4) The products labeled and branded with the name "Dr. La Morse" were not compounded or manufactured under the direction of, or in accordance with, the formula of a doctor of medicine, of dental surgery or of pharmacy, nor prescribed or compounded by a chemist. The said name, "Dr. La Morse", is fictitious, and no such person has any connection with any laboratory or factory engaged in manufacturing or compounding perfumes, cosmetics, or other toilet preparations in the State of New York or elsewhere.

(5) The use of the word "Paris" on the labels of respondent's products, is calculated to convey, and does convey to the minds of

the purchasing and consuming public, that said products so labeled are imported from Paris, France, when in truth and in fact the said products were manufactured and compounded within the United States.

PAR. 4. Perfumes, cosmetics, and toilet preparations manufactured or compounded in France and imported into the United States have, for many years, enjoyed widespread popularity, good will, and demand among the trade and consuming public throughout the United States, many of whom consider and believe that perfumes, cosmetics, and other toilet preparations manufactured or compounded in France are superior in quality and other desired characteristics to such commodities manufactured in the United States, and many of the consuming public throughout the United States purchase perfumes, cosmetics, and other toilet preparations manufactured in France and imported into the United States in preference to perfumes, cosmetics, and other toilet preparations manufactured in the United States.

PAR. 5. The aforesaid labeling, branding, and designating of respondent's said perfumes, cosmetics, and other toilet preparations as set out herein, have the capacity and tendency to mislead and deceive many of the consuming public into the erroneous belief that respondent's said perfumes and cosmetics are manufactured in Paris, France, and imported into the United States, and cause them to purchase same on account of such erroneous belief.

The aforesaid labeling and branding of "tissue cream" have the capacity and tendency to mislead and deceive many of the consuming public into the erroneous belief that such products were manufactured or compounded in a laboratory and under the direction and supervision of "Dr. La Morse", and cause them to purchase same on account of such erroneous belief.

PAR. 6. There are, among the competitors of respondent referred to hereinabove, many who deal in and sell perfumes and cosmetics manufactured in Paris, France, and imported into the United States, and who rightfully and lawfully represent such perfumes and cosmetics as being so manufactured and imported; there are others of said competitors who deal in and sell perfumes and cosmetics manufactured in the United States, and who in no manner represent that such perfumes and cosmetics are manufactured in Paris, France. There are others of said competitors who deal in and sell products similar to those sold by respondent who in no wise misrepresent their origin or their qualities, or represent that they are manufactured or compounded by a doctor, a chemist, or a pharmacist when they are not so manufactured or compounded.

PAR. 7. Respondent's acts and practices, all as in this complaint before set out, tend to unfairly divert business from and otherwise to injure and prejudice its said competitors.

PAR. 8. The above alleged acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 27th day of June 1935, issued and served its complaint in this proceeding upon respondent, Johnson Wholesale Perfume Co., Inc., a corporation and also trading as Allen's Cut-Rate Shops and Allied Cut-Rate Shops, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations in said complaint, were introduced by Astor Hogg, attorney for the Commission, before John W. Addison, an examiner of the Commission heretofore duly designated by it, and in defense of the allegations of the complaint by Herman M. Levy, attorney for respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence and briefs in support of the complaint and defense thereto, and the Commission having duly considered the same, and being advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Johnson Wholesale Perfume Co., Inc. also trading as Allen's Cut-Rate Shops and as Allied Cut-Rate Shops, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at New Haven, Conn. It is now, and has been for more than nine years last past, engaged in the sale and dis-

tribution of cosmetics and toilet preparations through twenty retail stores which it owns, located in the States of Rhode Island and Connecticut and in the Commonwealth of Massachusetts, which stores are operated either under the name of Allen's Cut-Rate Shops or Allied Cut-Rate Shops. In the sale of such products respondent is now, and has been, in substantial competition with other corporations, and with firms, individuals, and partnerships, engaged in the sale and distribution of cosmetics and toilet preparations in commerce among and between the various States of the United States.

Jay H. Schmidt is an individual trading under his own name and under the name and style of Jay H. Schmidt, Perfumer, with his factory and principal place of business located in the city of New York, State of New York. He is now, and for several years last past has been, engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof in commerce between and among the various States of the United States, causing said products when sold by him to be shipped from his place of business in the State of New York to purchasers thereof located in States other than the State of New York. In the course and conduct of his said business, said Jay H. Schmidt is, and has been at all times herein mentioned, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution in interstate commerce of cosmetics and other toilet preparations.

Jay H. Schmidt is a private-brand manufacturer of cosmetics and other toilet preparations. For more than three years last past said Schmidt has sold and shipped, and still sells and ships, cosmetics and other toilet preparations manufactured under specifications of the respondent, from his factory in the State of New York to respondent located at New Haven, Conn., where such products are stored temporarily in the warehouse of the respondent located at that point; thereafter, and depending upon the need, respondent ships such products by its own trucks from its warehouse located in New Haven, Conn., to its stores located in the States of Connecticut, Massachusetts, and Rhode Island.

PAR. 2. Jay H. Schmidt, under the specifications and direction of respondent, manufactures and labels in his factory in New York City, some fifty different items of cosmetics for respondent. All the products manufactured by Jay H. Schmidt and sold to and resold by respondent are manufactured in the United States—none of them are manufactured in France or in any other foreign country. In many instances, Jay H. Schmidt furnishes respondent the finished products.

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that is to say, products that have been manufactured by him and placed in containers on which containers Schmidt pasted labels such as are hereinafter set out. When Schmidt furnishes the so-called finished products he (Schmidt) attaches labels, such as are hereinafter set out, to the finished products as directed by respondent. At other times Jay H. Schmidt sells and ships the products manufactured by him from his place of business in New York City to respondent located at New Haven, Conn., in bulk, and respondent in New Haven, Conn., places the labels, such as are hereinafter set out, on the containers of the products.

PAR. 3. In the course and conduct of its business as aforesaid, by means of labels affixed to the packages and containers in which its cosmetics are distributed and sold, and reading as follows:

D'Vora Lasting Nail Polish,
 Mme. D'Vora, Paris, New York,
 Arlene Richards * * * Finishing
 Lotion * * * Arlene Richards
 Laboratories, Paris, New York,
 Arlene Richards Astringent,
 Laboratories, Paris, New York,
 D'Vora Liquid Face Powder,
 Paris, New York,
 Arlene Richards Wave Set,
 Arlene Richards Laboratories,
 Paris, New York,

and through its servants, agents, and employees in its various stores, respondent represents that said cosmetics are manufactured in Paris, France, and imported into the United States.

PAR. 4. Cosmetics manufactured in France have for many years enjoyed widespread popularity and good will and demand among the trade and consuming public throughout the United States, many of whom believe and consider that cosmetics manufactured in France are superior in quality to cosmetics manufactured in the United States and that such cosmetics manufactured in France have other characteristics more desirable than cosmetics manufactured in the United States. Many of the consuming public throughout the United States purchase cosmetics manufactured in France and imported into the United States in preference to purchasing cosmetics manufactured in the United States. To label a domestic cosmetic as one of French origin causes such cosmetic to have added sales value and enables dealers in the cosmetic so labeled to sell same more readily than would otherwise be the case.

The labels, marks, brands, and designations made and caused to be made by respondent and said Jay H. Schmidt, as hereinabove set out, are each and all false and misleading in that neither the said Jay H. Schmidt nor the respondent had, or has, any factory or laboratory in Paris. Neither the D'Vora Lasting Nail Polish nor the Arlene Richards Finishing Lotion nor the Arlene Richards Astringent nor the D'Vora Liquid Face Powder nor the Arlene Richards Wave Set nor any of respondent's products was manufactured or compounded in Paris, France, or in France. There is no such person as "Arlene Richards." There are no "Arlene Richards Laboratories" in existence.

PAR. 5. In aid of the sale of one of its cosmetics, designated as "Arlene Richards Tissue Cream," by means of labels affixed to the containers in which said cream is sold and distributed, and reading as follows:

Arlene Richards Tissue Cream,
a Food For the Skin and Tissues,
Helps Nature to Fill Out the
Hollows, Lines, and Wrinkles,
Arlene Richards Laboratories,
New York,

respondent represents that said tissue cream is a food for the skin and tissues, and helps nature to fill out hollows, lines, and wrinkles.

The said cream, hereinabove referred to, has the following quantitative and qualitative analysis:

	<i>Percent</i>
Water.....	12.00
Sodium borate.....	0.66
Ash.....	0.01
Chloroform soluble.....	86.50
Other ingredients.....	0.83
Saponification value on the chloroform soluble matter.....	37.3
Iodine value on the chloroform material.....	17.5

The Commission finds that a face cream can only have a therapeutic value or effect when it serves as a vehicle for medicinal agents in the cream, which medicinal agents are capable of producing such effect. The undisputed medical testimony of record shows, and the Commission finds, that the Arlene Richards Tissue Cream, as above mixed and compounded, does not serve as a vehicle for or contain any medicinal agent capable of producing any therapeutic effect and it is not a food for the skin and tissues and it does not help nature to fill out hollows, lines, and wrinkles as represented by respondent, and respondent's said representations, therefore, are false and misleading.

PAR. 6. The aforesaid labeling and designating of said cosmetics as set out herein have the capacity and tendency to mislead and deceive the purchasing public into the erroneous beliefs that said cosmetics are manufactured or compounded in Paris, France, or in France and then imported into the United States, that the tissue cream designated and labeled as "Arlene Richards Tissue Cream" is a food for the skin and tissues and helps nature to fill out hollows, lines, and wrinkles. Said labeling and designating of such products as aforesaid have the capacity and tendency to induce the purchasing public to purchase said products because of the erroneous beliefs engendered, as above set forth.

The said labeling and designating of the said cosmetics as set out herein places in the hands of the clerks in respondent's stores an instrument and means whereby said clerks may pass off said products and sell said products as French or manufactured in France.

PAR. 7. The Commission finds that the respondent has unlawfully, knowingly, and with the intent so to do, engaged in a conspiracy, common understanding, combination, and agreement with said Schmidt to falsely label, brand, and designate cosmetics for sale and distribution in interstate commerce as aforesaid, and has in fact falsely and fraudulently labeled and caused to be falsely and fraudulently labeled such products, and shipped and caused to be shipped the same in interstate commerce, and has offered for sale and sold to the consuming public such products so falsely and fraudulently labeled and branded.

PAR. 8. There are among the competitors of respondent and Jay H. Schmidt, referred to in paragraph 1 hereinabove mentioned, many who deal in and sell cosmetics that have been manufactured in France and imported into the United States, and who rightfully and truthfully represent said cosmetics to be such. There are others of said competitors who deal in and sell cosmetics manufactured and compounded in the United States who in no manner represent their said cosmetics to be manufactured or compounded in Paris, France, or in France. There are others of said competitors who in no manner misrepresent the place of manufacture or origin or virtues or functions or properties of their said products. Respondent's acts and practices hereinbefore set out tend to unfairly divert business from and otherwise injure said competitors.

PAR. 9. The manufacturer of said cosmetics, Jay H. Schmidt, on June 10, 1935, stipulated and agreed with the Commission, voluntarily, to discontinue the aforesaid unfair practices.

CONCLUSION

The aforesaid acts and 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 the competitors of Jay H. Schmidt and constitute unfair methods of competition in commerce and are in violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and briefs filed herein, 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, Johnson Wholesale Perfume Co., Inc., also trading as Allen's Cut-Rate Shops and Allied Cut-Rate shops, or trading under any other name or names, its officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of cosmetics or toilet preparations hereby cease and desist from:

1. Directly or indirectly entering into, engaging or taking part in any agreement, combination, conspiracy, collusion, concerted action, or concerted course of conduct with Jay H. Schmidt or with any other person, firm, or corporation to label, mark, brand, advertise, or designate for interstate sale or distribution cosmetics or toilet preparations compounded or manufactured in the United States with the words "Paris" or "France" or with any other word, words, or representation indicating or importing that such toilet preparations or cosmetics have been compounded or manufactured in Paris, France, or in France or imported into the United States.

2. Directly or indirectly causing, or aiding or abetting Jay H. Schmidt or any other person, firm, or corporation to cause toilet preparations or cosmetics, manufactured or compounded, in the United States, to be labeled, marked, branded, advertised, or represented

with the words "Paris" or "France" or with any other word, words, or representation indicating or importing that such toilet preparations or cosmetics have been compounded or manufactured in Paris, France, or in France or imported into the United States.

3. Directly or indirectly entering into, engaging, or taking part in any agreement, combination, conspiracy, collusion, concerted action, or concerted course of conduct with Jay H. Schmidt or with any other person, firm, or corporation to represent in any manner whatsoever that Arlene Richards Tissue Cream, mixed and compounded in accordance with the formula as set forth in the findings herewith, or any other cream or cosmetic of the same or substantially the same composition or ingredients is a food for the skin or tissues or that it will help nature fill out hollows, lines or wrinkles.

4. Directly or indirectly causing, or aiding or abetting Jay H. Schmidt or any other person, firm, or corporation to cause, to represent in any manner whatsoever that Arlene Richards Tissue Cream, mixed and compounded in accordance with the formula as set forth in the findings herewith, or any other cream or cosmetic of the same or substantially the same composition or ingredients is a food for the skin or tissues or that it will help nature to fill out hollows, lines or wrinkles.

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

Syllabus

IN THE MATTER OF
DISTILLERS EXCHANGE, INC.

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

Docket 2475. Complaint, June 28, 1935—Decision, July 21, 1936

Where a corporation engaged in wholesaling spirituous beverages, i. e., chiefly whiskies, gins, and cordials, and in buying bottled goods from distillers in various States, and, in small quantities, from rectifiers, and in selling same to wholesalers, jobbers, retailers, and retail package stores, and advertising in newspapers to a limited extent, and by the sending out of from 4 to 6 thousand circulars every 4 months, and doing a monthly business of about \$125,000, and neither owning, operating, nor controlling any place or places where alcoholic beverages are made by process of original and continuous distillation from mash, wort, or wash, and not a distiller, and in substantial competition, as thus engaged, with distillers, rectifiers, and other wholesalers whose bottled goods reach retail stores for sale in same States and territories in which its goods are offered—

- (a) Made use of words "Distillers" and "Exchange," as included in its corporate name, on stationery, catalogs, advertising, and labels attached to bottles in which it sold and shipped its said products, and in various other ways, and represented thereby to customers that it was a distiller and that the said whiskies, gins, and other alcoholic beverages thus contained were by it made through process of distillation from mash, wort, or wash, and furnished its said customers with means of thus representing it to their vendees, both retailers and ultimate consuming public; and
- (b) Represented, through use of words "Distillers Exchange" in its corporate name, to customers and prospective customers, that it was operating, a place where distillers engaged in trading or bartering spirits or liquors of equivalent values, and that the whiskies, gins, etc., by it so labeled, sold, and distributed, were commodities which had been so exchanged, notwithstanding fact it did not operate or control an exchange or place where commodities are bartered or traded for equivalent articles, and its business was clearly not an exchange as usually understood from word;

With effect of misleading dealers and purchasing public into beliefs that it was a group or association of distillers, operating an exchange, and that it was a distiller, or group of distillers, and that whiskies, etc., sold by it had been made or distilled by it or them from mash, wort, or wash, by one continuous process, and with capacity and tendency so to do, and with effect of inducing dealers and purchasing public, acting in such beliefs, to buy such whiskies, etc., thus labeled and sold by it, and thereby divert trade to it from its competitors who do not, through their corporate or trade names, or in any other manner, misrepresent themselves as distillers; to the substantial injury of substantial competition in commerce:

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

Complaint

23 F. T. C.

Before *Mr. John W. Bennett*, trial examiner.
Mr. PGad B. Morehouse for the Commission.
Glatzer & Glatzer, 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 Distillers Exchange, 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 the 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 is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business in the city of New York, in said State. It is now, and for more than 1 year last past has been, engaged in the business of a wholesaler and distributor of whiskies, gins, and other alcoholic beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of its business as aforesaid, respondent is, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States

and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business as wholesalers and distributors of whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillers" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of alcoholic liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery, catalogs, advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

In the course and conduct of its business as aforesaid, by the use of the word "Exchange" in its corporate name, respondent represents to its customers and prospective customers that it is operating a place where distillers engage in trading or bartering spirituous or other liquors of equivalent values, and that the whiskies, gins, and other alcoholic beverages by it so labeled, sold and transported are commodities which have been so exchanged, when in truth and fact respondent does not own, operate, or control an exchange or place where commodities are bartered or traded for equivalent commodities and is engaged in a business that is clearly not an "exchange" within the usually understood meaning of the word.

Complaint

23 F. T. C.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other alcoholic beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products. There are also among the competitors of respondent corporations, firms, partnerships, and individuals engaged in the business as wholesalers and distributors of whiskies, gins, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," "distillers," or "distillers exchange" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent operates an exchange and that the spirituous commodities sold and transported by respondent, as aforesaid, have been exchanged by distillers; that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process, and such representations are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages so labelled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent

are to the prejudice of the public and the 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," 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 June 28, 1935, issued, and on June 29, 1935, served its complaint in this proceeding upon respondent, Distillers Exchange, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Messrs. Glatzer & Glatzer, attorneys for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; oral arguments of both counsel for the Commission and counsel for the respondent having been waived; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized November 21, 1933, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 425 Fourth Avenue, in the city of New York, in said State. While respondent's corporate charter is broad enough to permit it to engage in almost any branch of the liquor business, it has since its organization engaged only in the selling of spirituous beverages (chiefly whiskies, gins, and cordials) at wholesale in constant course of trade and commerce between and among the various States of the

United States and in the District of Columbia. Its principal customers are wholesalers, jobbers, retailers, and retail package stores, the bulk of its sales being made to retailers within the State of New York. Respondent buys its goods already bottled from distillers in Kentucky, Maryland, Pennsylvania, and Illinois, and a small quantity from rectifiers. It does an average monthly business of approximately \$125,000 volume, and sells in limited quantities in the District of Columbia, Connecticut, and other States. Between February 1934 and November 1935, it had more than 100 customers outside of the State of New York, and keeps a resident sales agent in the District of Columbia who does not solicit customers actively, but receives and forwards orders for the goods of respondent. It has also done some mail-order business in liquors. Respondent advertises its goods in newspapers to a limited extent, and sends out circular advertising matter in quantities of 4,000 to 6,000 at intervals of several months during each year.

In the course and conduct of its business, it causes its said products, when sold, to be transported and shipped from its place of business aforesaid, into and through various States of the United States to its aforesaid customers and, in the conduct of its said business, is in substantial competition with distillers, rectifiers, and other wholesalers whose bottled goods reach retail stores for sale in the same States and territories where respondent's goods are offered for sale.

PAR. 2. Activities in connection with the manufacture and sale of alcoholic beverages are divided among several classes of manufacturers, processors, and dealers. The initial process of manufacturing is in the hands of distillers. In the case of whiskey, these distillers manufacture their products by the distillation of fermented grain mash, which produces at lower temperatures of distillation the product called whiskey. This whiskey contains certain esters or flavoring elements, and also some ingredients which it is necessary to eliminate before the whiskey is entirely potable. After the distillation process has been completed, the whiskey is placed in wooden barrels, charred on the inside, and stored in bonded warehouses, which are separate and distinct from the distillery, being located in a different and separate building. The whiskey thus distilled is usually held for an aging process, which removes certain undesirable elements from the product by absorption or other elimination, by means of the charred wood on the inside of the container. After it is considered fit for market, it may be sold by the distiller in bulk to rectifiers, or the rectifiers may acquire the bulk whiskey by buying bonded warehouse certificates. After the Government tax has been paid on

the product it may be transferred to tanks in rectifying establishments, and there the whiskey may be bottled and labeled. Distillers are permitted to bottle "straight whiskey" in the warehouse and to sell the bottled goods to wholesalers. Distillers may have rectifying plants, separate from the distillery and warehouse, operated under a rectifier license. It is then ready for sale in wholesale and retail channels of trade and may be sold by rectifiers to wholesalers and retailers or it may be sold by rectifiers only to wholesalers, and the wholesalers may in turn make sales to retailers. These retailers include packaged goods stores and proprietors of drinking places, where the liquor is sold by the glass to consumers.

Each distiller operates under a specific Federal license carrying the symbol "D" with a number, indicating the designation of his license to do a distilling business. The rectifier operates under a license designated by the symbol "R" with a number, which indicates the designation of his license to do business as a rectifier. The wholesaler does business under a wholesaler's license with the symbol "L. L." and a number, indicating the designation of his license. The retail dealer is licensed under the symbol "L." While the distiller may also take out a rectifier's license and a wholesaler's license, and a rectifier may take out a wholesaler's license, no class of manufacturers or dealers is permitted to do business in the other class without qualifying in the class in which that business is ordinarily conducted. Besides the Federal regulations, there are elaborate State regulations requiring additional State licenses.

Many distillers do business under the name of distillers. Some have the words "distiller" or "distilleries" or "distilling" in their corporate names, and others advertise themselves as distillers or are known as distillers. The words "distillers," "distillery," "distilling," or "distilleries" in the whiskey trade for a long period of time have definitely signified the true distilling process of manufacturing whiskey from fermented mash. Distillers who are also rectifiers bottle their goods and come into competition with dealers doing business such as is conducted by respondent. There are many wholesale dealers and jobbers selling in the same territories as respondent who do not have the words "distillers" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

The words "distiller," "distillers," "distilling," and "distilleries," used in the corporate names of concerns which are rectifiers and wholesalers are in fact, in general, a distinct advantage to the concerns using them or one of them in the sale of their products to

dealers and in the sale by dealers to consumers. The whole record in this case supports this statement, with scarcely an exception.

PAR. 3. The record contains the testimony of 44 members of the public, whose names were obtained from the classified section of telephone directories, including dentists, mining engineers, real estate men, public accountants, bond brokers, physicians, inspectors, and promoters. With scarcely an exception, this testimony shows that the word "distillers," when used in connection with the distilled spirits or whiskey industry, signified to them as members of the public the manufacture of spirits from the raw materials. Some of these witnesses positively indicated that the use of the name "Distillers Exchange" would mislead them and indicate to them an advantage in purchasing the goods of respondent, and some of them testified that to them the "Exchange" connoted a place where distillers had met to barter their products, or that it was an association of distillers; a trade organization of distillers.

Such use by respondent of the terms "Distillers Exchange," separately, and in combination, is of a potentially deceptive character, respondent being neither a distiller, nor an exchange of distillers. The Commission finds that by such use of the word "Distillers" in its corporate name, printed on its stationery, catalogs, advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

The Commission also finds that by the use of the combination of words "Distillers Exchange" in its corporate name respondent represents to its customers and prospective customers that it is operating a place where distillers engage in trading or bartering spirituous or other liquors of equivalent values, and that the whiskies, gins, and other alcoholic beverages by it so labeled, sold, and transported are commodities which have been so exchanged, when in truth and fact respondent does not own, operate, or control an exchange or place where commodities are bartered or traded for equivalent commodi-

ties, and is engaged in a business that is clearly not an "Exchange" within the usually understood meaning of the word.

PAR. 4. The aforesaid representations by respondent have the capacity and tendency to, and do, mislead dealers and the purchasing public into the beliefs that respondent is a group or association of distillers operating an exchange; that respondent is a distiller, or group of distillers; and that the whiskies, gins, and other alcoholic beverages sold by respondent have been manufactured or distilled by it, or them, from mash, wort, or wash by one continuous process; and such representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages so labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued and served June 29, 1936, the answer of respondent thereto, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by PGad B. Morehouse, counsel for the Commission and by Messrs. Glatzer & Glatzer, counsel for the respondent, oral argument having been waived by both counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the Act of 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, Distillers Exchange, Inc., its agents, salesmen, and employees, in connection with the offering for sale, or sale by it, in interstate commerce of whiskies, gins, and other alcoholic beverages, do forthwith cease and desist from:

1. Representing, through the use of the word "Distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other alcoholic beverages; or (b) that the said whiskies, gins, or other alcoholic beverages were by it manufactured through the process of distillation; or, (c) that it owns, operates, or controls a place or places where such products are by it manufactured through a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until it shall actually own, operate, or control such a place or places:

2. Representing, through the use of the word "Distillers" in connection with the word "Exchange" or any other word or words of like import in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import, that it is operating a place where distillers engage in trading or bartering spirituous liquors, or that the spirituous liquors by it so labeled, sold and transported, are commodities which have been exchanged by or between distillers unless and until respondent shall in fact own, operate, or control an exchange or a place where commodities are bartered or traded by an association, combination, or group of individuals, some of whom are engaged in the manufacture of spirituous liquors by the process of original and continuous distillation from mash, wort, or wash.

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

Complaint

IN THE MATTER OF
ELECTRO THERMAL COMPANY

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

Docket 2243. Complaint, Oct. 29, 1934—Decision, July 23, 1936

Where a corporation engaged in the sale of an electric device designated "Thermal-aid", for treatment of prostate gland, in competition with others engaged in offer and sale in commerce of various therapeutic devices and appliances designed and intended for treatment thereof—

Falsely represented, in advertisements thereof in newspapers and periodicals and in booklets sent to prospective purchasers, and through asserted testimonials published therein, that said device would cure diseases and ailments of said gland, and constipation and other ailments associated by it therewith, and, in connection with its advertisement of its said device, made numerous false and misleading statements with respect to the functioning of said gland, and the asserted symptoms, and results on masculine performance, efficiency and well-being which assertedly followed its failure to function properly, and asserted results of surgical or other methods of treating ailments and diseases thereof;

With effect of misleading and deceiving purchasers and inducing their purchase from it of said device in reliance upon the truth of such various misrepresentations in its said advertisements, booklets, pictorial representations, form letters, and published testimonials, and with capacity and tendency so to mislead and deceive and to divert trade to it from competitors; to the substantial injury of substantial competition:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. John A. Nash and *Mr. Harry S. Harned*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Electro Thermal Company, 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.

PARAGRAPH 1. Respondent, Electro Thermal Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its principal place of business at Steubenville in the State of Ohio.

Respondent corporation has, for more than five years last past, been and is now engaged in the business of offering for sale and selling an electric device designated as "Thermalaid" for the treatment of the prostate gland by the application of heat, in commerce between and among the several States of the United States. Respondent has caused and still causes said electric device when so sold to be transported from its place of business in the city of Steubenville, State of Ohio, into and across the several States of the United States to purchasers thereof located at various places in said several States.

Other persons, firms, associations, and corporations have been and are engaged in offering for sale, selling, and transporting in said commerce like and competitive devices, medicines, preparations, and treatments for the prostate gland.

In the course and conduct of its said business, respondent corporation has been and is in competition with all such other persons, firms, associations, and corporations so engaged in offering for sale and selling in said commerce between and among the several States of the United States said like and competitive devices, medicines, preparations, and treatments for the prostate gland.

PAR. 2. Respondent in the sale and offering for sale of its said product has caused same to be advertised in newspapers, magazines, and periodicals. In said advertisements, respondent offered to mail to prospective purchasers a free booklet upon request, said booklet being styled "Why Many Men Are Old at 40." Both said advertisements, the advertising booklet, and form letters accompanying same, mailed upon request to the prospective purchasers, contain certain inaccurate, exaggerated, false, and misleading statements and representations with reference to said product, a portion of which are hereinafter specifically set out.

PAR. 3. In said ways and by said means respondent has made and makes the following statements and representations with reference to its said product so offered for sale and sold by the designation or name of "Thermalaid":

**CURE THIS GLAND ANNOYANCE
THAT CAUSES THESE FAMILIAR SYMPTOMS IN
MEN PAST 40!**

If you are past 40, and now have to get up every night, and have started to suffer from what you think are "bladder symptoms", you should know what

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doctors say this weakness often means. They say it may be a warning of failure of a vital male gland—the prostate. In millions of men—one authority says 65% of all men past 50—this gland starts to slow down shortly after middle age period. Night rising is one of the surest signs of this gland weakness. Constipation; piles; pains in the back and legs that feel like sciatica or rheumatism; weakness and lack of endurance are frequent results. If unchecked, this gland may swell until surgery is needed to relieve it. Yet today a simple home treatment acts immediately to check these symptoms and to bring amazing quick relief. This same principle, used in New York hospital tests, has recently brought splendid results.

FREE TO MEN PAST 40

Now a vital free book on "Why Many Men Are Old at 40", explains complete facts about prostate gland weakness and the method of prevention. Complete details of the simple Thermalaid treatment, and actual experiences of many of Thermalaid's 100,000 users. No cost or obligation—just write today.

In said booklet entitled "Why Many Men Are Old at 40" appears the following:

A STARTLING FACT:

Many medical authorities have long claimed that 65% of all men past middle age have prostate trouble. Thousands have it without the least idea in the world that there is such a thing as the prostate gland. Hence the sexual life, the efficiency, the mental serenity of thousands is being deteriorated, often without their knowledge.

Truly the destroyer of male health.

Many men are old at forty because they do not know the meaning of the little symptoms; little signs of a big trouble that often robs life of much happiness.

There are men who rise often at night to void urine, men who suffer leg pains of sciatica, men who have backaches at nape of the neck and further down, men who have aches in the pelvic region or the perineum (crotch), men who exaggerate every worry and care. Many of these persons are so busy with the affairs of life that they do not know and perhaps never heard of the prostate gland.

The neglect of a prostatic condition leads to baneful results and often serious surgery—don't wait. If you love health, happiness, smiles and sunshine; if efficiency and longer life mean more than dollars, if youth seems fleeting, you will certainly accept with an open mind that which is reasonable help and that which has served so many others with a service beyond the value of money.

* * * By means of a splendid little appliance called a Thermalaid you use this powerful nature force directly behind the prostate gland. *Immediately you feel its gentle warmth and immediately nature responds with an abundant local circulation of active blood coursing through the prostate.* Blood cleanses, blood builds, blood is nature's greatest scavenger.

The Thermalaid presented in this way gently dilates rectal muscles, sets up reflexes and physiological conditions tending to correct many forms of piles and constipation.

The applicator presents thermic energy in a constant outflow, evenly, at the right place, and can be controlled to the right amount * * * The physiologist will tell you that the use of Thermalaid increases the local circulation

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of blood by its action upon the vaso-motor nerves; he would tell you that its action increases metabolism, that wonderful chemical action by which nature, through the blood, virtually tears down the old and rebuilds with new.

That is why the nerves of the prostate are relieved, congestion removed and restoration of health and strength encouraged.

* * * * *
 " * * * Headaches, sciatic pains, constipation, indigestion and prostate weakness reduced me to a terrible condition.

"Reading your frank, sincere discussion of disorders which seem to handicap so many men these days led me to try your invention, at your risk and I can now say in all sincerity that I believe it saved my life."

* * * * *
 A few months ago I was certainly a sick man. My back hurt, my kidneys hurt, my head hurt and the outlook was not at all bright. I was a nervous wreck and I did not care whether I lived or not.

"Through the use of a THERMALAID I have experienced complete relief from the conditions which made me feel so miserable. Now, I feel fine and would like to tell all the men in the world who suffer with prostate trouble, that I believe the THERMALAID Method worth a million dollars."

* * * * *
 Constipation often being a contributing cause of prostate trouble, it is evident that a successful treatment for the latter should necessarily relieve constipation. As a matter of fact, THERMALAID has been found to be of great benefit in treating constipation.

* * * * *
 Piles so frequently occurring when constipation exists may be expected to respond quickly to this treatment. This troublesome and painful malady often and in numerous cases responds after other methods have proven futile. In this connection, many letters are received from sufferers of this disagreeable malady enthusiastically praising THERMALAID for the relief it has afforded from this condition.

* * * * *
 Thus we expect ideal conditions for the successful treatment of prostatic sluggishness and hypertrophy of the gland; a gland often concerned in impotency and the marital instincts. * * *

* * * * *
 With a form letter accompanying said booklet, "WHY MEN ARE OLD AT 40", respondent makes, among other things, the following representations:

The booklet you asked for gets right down to brass tacks about this prostate gland shortcoming, that so often steals energy, personality, memory and ambition. Do you realize that prostate trouble is an insidious disease and may be developing for years with little or no warning? If you have to rise at night to void urine, if backache, foot and leg pains are present, if you feel below par, then it may be time to look to the prostate.

If you have a mild case, you may surprise yourself with new joy of living, new energy and enhanced power to do. If you have a fretful, serious, nagging case, by all means waste not one minute in getting THERMALAID. * * *

"It has brought me more relief and vitality than all remedies I ever tried."

* * * * *

If you are looking for health, happiness and freedom from backache, foot and leg pains, frequent urination, so-called bladder troubles, worry, depression and debilities due to prostatic trouble, mail your order now. Delay is inadvisable * * *

When in truth and in fact said device known as "Thermalaid" is not a remedy or cure for prostatic trouble, piles, constipation, sciatica, nervousness, bladder weakness, and hypertrophy of the gland. The benefits alleged to be derived from use of said device are grossly exaggerated, misleading, and inaccurate in that the said device does not constitute competent treatment for the various ailments mentioned.

PAR. 4. The use of the said false and misleading statements and representations with reference to this said device has a tendency and capacity to deceive and mislead the public into the erroneous belief that said statements and representations are true, and to induce the public to purchase such device in and because of such erroneous belief. Respondent's said use of said false and misleading statements and representations has the tendency and capacity to divert trade to respondent and from its said competitors to the unfair advantage of respondent, to the injury of respondent's competitors and to the injury of the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 29, 1934, issued and on October 31, 1934, served its complaint in this proceeding upon the respondent, Electro Thermal Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by Morton Nesmith, attorney for the Commission, before Charles F. Diggs, an examiner of said Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by John A. Nash and Harry S. Harned, attorneys for the respondent; and said testimony and evidence was duly recorded and filed in the

office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereof, and the oral arguments of counsel aforesaid; and the Commission, having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Electro Thermal Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at Steubenville in said State.

The respondent corporation has, for more than five years last past, been and is now engaged in the business of offering for sale and selling an electric device designated "Thermalaid" in commerce between and among the several States of the United States. This device consists of a hard rubber unit designed to be inserted in the rectum for the application of heat to the prostate gland and adjacent tissues. It is activated through electricity derived from ordinary electric current or from a battery supply where no electricity is available. Respondent did cause and still causes this device when so sold to be transported from its place of business in the city of Steubenville, State of Ohio, usually by United States mail or parcel post, into and across the several States of the United States, to purchasers thereof located at various places in said several States.

In the course and conduct of its business, the respondent is, and has been, in competition with other individuals, corporations, and associations engaged in offering for sale and selling in commerce between and among the different States of the United States various therapeutic devices and appliances designed and intended for the treatment of the prostate gland.

PAR. 2. The respondent in the sale and offering for sale of its said device has caused same to be advertised in newspapers, magazines, and periodicals. In said advertisements, respondent offered, and still offers, to mail to prospective purchasers a free booklet upon request, said booklet being styled "Why Many Men are Old at Forty." The respondent further sends to prospective purchasers through the mail numerous form letters and advertisements and pictorial representations which contain many reasons why the said prospective purchaser should purchase "Thermalaid". These advertisements, book-

lets, pictorial representations, and form letters accompanying some of respondent's advertising material contained certain inaccurate, exaggerated, false and misleading statements and representations concerning the efficacy, curative and palliative value of "Thermalaid". A portion of these statements, representations and claims are as follows:

**CURB THIS GLAND ANNOYANCE
THAT CAUSES THESE FAMILIAR SYMPTOMS IN
MEN PAST 40!**

If you are past 40, and now have to get up every night, and have started to suffer from what you think are 'bladder symptoms', you should know what doctors say this weakness often means. They say it may be a warning of failure of a vital male gland—the prostate. In millions of men—one authority says 65% of all men past 50—this gland starts to slow down shortly after middle age period. Night rising is one of the surest signs of this gland weakness. Constipation; piles; pains in the back and legs that feel like sciatica or rheumatism; weakness and lack of endurance are frequent results. If unchecked, this gland may swell until surgery is needed to relieve it. Yet today a simple home treatment acts immediately to check these symptoms and to bring amazing quick relief. This same principle, used in New York hospital tests, has recently brought splendid results.

FREE TO MEN PAST 40

Now a vital free book on "Why Many Men Are Old at 40", explains complete facts about prostate gland weakness and the method of prevention. Complete details of the simple Thermalaid treatment, and actual experiences of many of Thermalaid's 100,000 users. No cost or obligation—just write today.

In said booklet entitled "Why Many Men Are Old at 40" appears the following:

A STARTLING FACT:

Many medical authorities have long claimed that 65% of all men past middle age have prostate trouble. Thousands have it without the least idea in the world that there is such a thing as the prostate gland. Hence the sexual life, the efficiency, the mental serenity of thousands is being deteriorated, often without their knowledge.

Truly the destroyer of male health.

Many men are old at forty because they do not know the meaning of the little symptoms; little signs of a big trouble that often robs life of much happiness.

There are men who rise often at night to void urine, men who suffer leg pains of sciatica, men who have backaches at nape of the neck and further down, men who have aches in the pelvic region or the perineum (crotch), men who exaggerate every worry and care. Many of these persons are so busy with the affairs of life that they do not know and perhaps never heard of the prostate gland.

The neglect of a prostatic condition leads to baneful results and often serious surgery—don't wait. If you love health, happiness, smiles and sunshine; if efficiency and longer life mean more than dollars, if youth seems fleeting, you will certainly accept with an open mind that which is reasonable help and that which has served so many others with a service beyond the value of money.

* * * By means of a splendid little appliance called a Thermalaid you use this powerful nature force directly behind the prostate gland. Immediately you feel its gentle warmth and immediately nature responds with an abundant local circulation of active blood coursing through the prostate. Blood cleanses, blood builds, blood is nature's greatest scavenger.

The Thermalaid presented in this way gently dilates rectal muscles, sets up reflexes and physiological conditions tending to correct many forms of piles and constipation.

The applicator presents thermic energy in a constant outflow, evenly, at the right place, and can be controlled to the right amount * * * The physiologist will tell you that the use of Thermalaid increases the local circulation of blood by its action upon the vaso-motor nerves; he would tell you that its action increases metabolism, that wonderful chemical action by which nature, through the blood, virtually tears down the old and rebuilds with new.

That is why the nerves of the prostate are relieved, congestion removed and restoration of health and strength encouraged.

* * * * *
 " * * * Headaches, sciatic pains, constipation, indigestion and prostate weakness reduced me to a terrible condition.

"Reading your frank, sincere discussion of disorders which seem to handicap so many men these days led me to try your invention, at your risk and I can now say in all sincerity that I believe it saved my life."

* * * * *
 "A few months ago I was certainly a sick man, My back hurt, my kidneys hurt, my head hurt and the outlook was not at all bright. I was a nervous wreck and I did not care whether I lived or not.

Through the use of a THERMALAID I have experienced complete relief from the conditions which made me feel so miserable. Now, I feel fine and would like to tell all the men in the world who suffer with prostate trouble, that I believe the THERMALAID Method worth a million dollars."

* * * * *
 Constipation often being a contributing cause of prostate trouble, it is evident that a successful treatment for the latter should necessarily relieve constipation. As a matter of fact, THERMALAID has been found to be of great benefit in treating constipation.

* * * * *
 Piles so frequently occurring when constipation exists may be expected to respond quickly to this treatment. This troublesome and painful malady often and in numerous cases responds after other methods have proven futile. In this connection, many letters are received from sufferers of this disagreeable malady enthusiastically praising THERMALAID for the relief it has afforded from this condition.

* * * * *
 Thus we expect ideal conditions for the successful treatment of prostatic sluggishness and hypertrophy of the gland; a gland often concerned in impotency and the marital instincts. * * *

* * * * *
 With a form letter accompanying said booklet, "WHY MANY MEN ARE OLD AT 40", respondent makes, among other things, the following representations:

The booklet you asked for gets right down to brass tacks about this prostate gland shortcoming, that so often steals energy, personality, memory and ambi-

tion. Do you realize that prostate trouble is an insidious disease and may be developing for years with little or no warning? If you have to rise at night to void urine, if backache, foot and leg pains are present, if you feel below par, then it may be time to look to the prostate.

If you have a mild case, you may surprise yourself with new joy of living, new energy and enhanced power to do. If you have a fretful, serious, nagging case, by all means waste not one minute in getting THERMALAID. * * *

"It has brought me more relief and vitality than all remedies I ever tried."

* * * * *

If you are looking for health, happiness and freedom from backache, foot and leg pains, frequent urination, so-called bladder troubles, worry, depression and debilities due to prostatic trouble, mail your order now. Delay is inadvisable * * *.

PAR. 3. The Commission finds that the expert medical testimony of record in this case preponderates to show the following facts:

1. That the number of men past 50 suffering from prostatic diseases or diseases referable to the prostatic gland is nearer 45% than 65%;

2. That prostatitis is an inflammatory or congested condition or swelling of the prostate gland;

3. That hypertrophy is an enlargement or growth of the prostate itself;

4. That prostatitis may be due to congestion caused by sexual excesses, gonorrhoeal infection, drugs, cystitis, trauma, injuries to the pelvis, rectum, bladder, perineum or an infection in subjacent structures;

5. That the etiology of hypertrophy of the prostate gland is not well known;

6. That "Thermalaid" will not cure prostatitis but might afford temporary relief by reducing the inflammation and congestion;

7. That "Thermalaid" will not cure hypertrophy of the prostate gland but may afford some temporary relief where the hypertrophy is accompanied by inflammation and congestion;

8. That there is no known cure for hypertrophy other than surgery, viz, resection or removal;

9. That "Thermalaid" will not cure piles or constipation, but will afford temporary relief if the piles are internal and the constipation is purely local or reflex and not organic or due to organic lesions in the intestinal tract;

10. That while the prostate gland plays a small part in the sexual act, it is not necessary in copulation and the removal of the prostate will not result in impotency or sterility. However, impotency or sterility may result in some cases where the spermatic cord or ducts are severed during the operation;

11. That "Thermalaid" will cure none of the prostate diseases as claimed by the respondent, but might tend to have some palliative effect;

12. That respondent's claim that "the prostate gland slows down in men past middle age and, if unchecked, will swell until surgery is needed" is false and misleading, the evidence being that the gland does not slow down and swelling is not treated surgically, but that surgery is only used for hypertrophy;

13. That respondent's claim "If you love health, happiness, smiles and sunshine; if efficiency and longer life mean more than dollars, if youth seems fleeting, you will certainly accept with an open mind that which is reasonable help and that which has served so many others with a service beyond the value of money" is false and misleading;

14. That respondent's claim that the "prostate gland short-coming, that so often steals energy, personality, memory and ambition" is false and misleading;

15. That respondent's claim "If you have a mild case, you may surprise yourself with new joy of living, new energy and enhanced power to do. If you have a fretful, serious, nagging case, by all means waste not one minute in getting THERMALAID. * * *" is false and misleading;

16. That respondent's claim "If you are looking for health, happiness and freedom from backache, foot and leg pains, frequent urination, so-called bladder troubles, worry, depression and debilities due to prostatic trouble, mail your order now. Delay is inadvisable * * *." is false and misleading;

17. That respondent's claim "Hence the sexual life, the efficiency and the mental serenity of thousands is being destroyed, often without their knowledge. Truly a destroyer of male health." when made with reference to the prostate gland, is false and misleading;

18. That respondent's claim "Another point worthy of emphasis is the effect of an operation on sexual strength. When you lose your prostate gland you bid goodbye forever to a vital part of the procreative system. In a very real sense the saying is true that a man is no longer a man when his prostate is gone." is false and misleading;

19. That respondent's claim "Thus we expect ideal conditions for the successful treatment of sluggishness and hypertrophy of the gland; a gland often concerned in impotency and the marital instincts." is false and misleading;

20. That respondent's claim "Constipation often being a contributing cause of prostate trouble, it is evident that a successful treatment for the latter should necessarily relieve constipation. As a matter of

fact, THERMALAID has been found to be of great benefit in treating constipation." is false and misleading;

21. That respondent's claim "Piles so frequently occurring when constipation exists may be expected to respond quickly to this treatment. This troublesome and painful malady often and in numerous cases responds after other methods have proven futile." is false and misleading.

PAR. 4. The foregoing false and misleading representations by the respondents have a capacity and tendency to mislead and have misled and deceived purchasers, and said advertisements, booklets, pictorial representations, form letters, and published testimonials accompanying respondent's said advertising material have misled and deceived purchasers thereof who, relying upon the truth of such representations and actuated by the erroneous belief that the use of "Thermalaid" is therapeutically efficacious as represented by respondent, in the prevention, treatment, relief, and cure of the various and sundry ailments, as hereinbefore set forth, have purchased and do purchase from respondent the said device known as "Thermalaid".

PAR. 5. The aforesaid advertisements, representations and statements made by the respondent, as hereinbefore set out, have had the capacity and tendency to divert trade to said respondent from competitors and by such representations and statements substantial competition throughout the various States of the United States has been injured by said respondent to a substantial extent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Trial Examiner Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Morton Nesmith, counsel for the Commission, and by John A. Nash, counsel 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, Electro Thermal Company, a corporation, its officers, directors, agents, representatives, and servants or employees in connection with the advertising, offering for sale, or sale in interstate commerce and in the District of Columbia of its device heretofore known as "Thermalaid", cease and desist from 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 65% of all men past middle age have prostate trouble.

(2) That the use of said device is a positive cure for any ailment.

(3) That the use of said device constitutes a competent treatment or cure for prostatitis.

(4) That the use of said device constitutes a competent treatment or cure for hypertrophy.

(5) That the use of said device constitutes a competent treatment or cure for constipation.

(6) That the use of said device constitutes a competent treatment or cure for piles.

(7) That the use of said device may surprise one with the new joy of living, new energy and enhanced power to do; that if one has a fretful, serious, nagging case, that said device will cure same.

(8) That if one is looking for health, happiness and freedom from backache, foot and leg pains, frequent urination, so-called bladder trouble, worry, depression and debilities due to prostatic trouble, he may expect immediate relief from the use of said device.

(9) That the proper functioning of the prostate gland is necessary in the sexual act.

(10) That a man is no longer a man when his prostate is gone.

(11) That the prostate gland slows down in men past middle age and, if unchecked, will swell until surgery is needed.

(12) That the loss of the prostate gland means goodbye forever to a vital part of the procreative system.

(13) That if one is suffering from any of the aforementioned ailments, delay in ordering "Thermalaid" is inadvisable.

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

Syllabus

IN THE MATTER OF

JONAS SCHAINUCK & SON, INC.

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

Docket 2768. Complaint, May 12, 1936¹—Decision, July 23, 1936

Where a corporation engaged in the operation of a chain of clothing stores for sale at retail of men's clothing in various States and cities, and in purchasing at wholesale, in connection therewith, ready-made clothing which it shipped or reshipped to its various retail stores for resale to purchasing and consuming public—

- (a) Made such statements by radio broadcast in soliciting sale of and selling its clothing, as "Divide the saving—Buy direct from Schainuck's—Their Factory-to-You Policy Saves You Money," and affixed to its garments and containers thereof labels containing legend "Maker to Wearer" and "Direct from our Factory to You," facts being it neither owned nor operated a clothing factory and did not make clothing sold by it; with effect of leading the purchasing public to believe that it was the manufacturer thereof, and thereby permitted them to receive better prices and better workmanship from it than from other retailers who do not misrepresent themselves as manufacturers;
- (b) Advertised in newspapers of wide and general circulation that it sold "All Wool Suits—Silk Lined for \$6.85," facts being chemical analysis thereof by a textile expert showed that they contained a large percentage of cotton and rayon and lining thereof contained no silk whatever;
- (c) Made such statements, in advertising, through newspapers of wide circulation and through circulars and handbills and over the radio, as "2 SUITS, 2 COATS, or 1 SUIT and 1 COAT for 1 LOW PRICE," "We're Doubling the value of your clothing dollar to double the number of our clothing friends—and customers!" "2 garments for 1 low price," "It's the two-for-one low price which we originated," "Schainuck's is the shop famous for the two garments for one low price," etc., and set forth on its salesmen's cards "Schainuck's Clothes—2 for 1 Price"; facts being average price to public for any two of its garments was approximately double that at which one garment of similar quality and workmanship was offered and sold to public by other retail clothing dealers; with result of leading purchasing and consuming public to believe, and with tendency to create impression, that by patronizing its stores they would obtain two suits or two coats or one of each for price which they would ordinarily pay at other stores for only one garment of similar grade and workmanship, and thus double value of customer's clothing dollar, or obtain an extra suit or overcoat without additional cost;

With a capacity and tendency to deceive and possibility of deceiving and misleading ultimate purchasers into buying suits, overcoats or other garments from it in belief that they were dealing with the manufacturer and thus obtaining better value and workmanship for price paid than they would

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from dealers who do not falsely make such representations or that it was a much larger organization than it actually was, and with effect of misleading and deceiving the public into buying certain of its suits as and for all wool and silk lined, and of misleading and deceiving public, or with possibility of so misleading and deceiving it, into belief that they were doubling their clothing dollar by patronizing its stores, or obtaining a garment free or two garments at a price which they would ordinarily pay for one of similar grade and workmanship at other stores, and with effect of unfairly diverting trade to it from competitors who truthfully represent the maker or manufacturer of their products, and the nature, type, or quality of material from which made, and true retail value thereof, and do not falsely offer to double value of customer's clothing dollar or to give customer an additional garment free or without extra cost, or two garments for price customer ordinarily pays for one, or make promises or representations of similar or like import, and with capacity and tendency so to do; to the substantial injury of competition:

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

Mr. James M. Hammond for the Commission.

AMENDED 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 Jonas Schainuck & Son, 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 the 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. Respondent, Jonas Schainuck & Son, Inc., is a corporation engaged in the operation of a chain of retail clothing stores. It is organized and exists pursuant to the laws of the State of New York, having its office and principal place of business at 757 Broadway, in the city of New York, State of New York. It is now and has for many years last past been engaged in the business of purchasing men's clothing in the State of New York, and other States of the United States, at wholesale, and shipping, re-shipping, or causing the same to be shipped to various and sundry stores owned and operated by it in the several States of the United States and in the District of Columbia, for sale to the purchasing and consuming public; some of its said stores are located in Washington, D. C., Pittston, Pa., Wilkes-Barre, Pa., Scranton, Pa., Allentown, Pa., Harrisburg,

Pa., Hazelton, Pa.; other stores so operated by it are located in the State of New York and in other States of the United States.

All of said stores, so located in various States of the United States and in the District of Columbia, with the personnel pertaining to the same, stocks of goods contained therein or in transit thereto, together with its buying and sales policies, advertising and advertising plans or policies, its merchandising, radio broadcasting, and all matters pertaining to the operation of said chain of retail clothing stores, are and have been controlled and directed by respondent's officers and agents from respondent's principal place of business in the city of New York, State of New York, at which place its general offices are located and from which office the entire chain of respondent's stores are controlled and directed by respondent's principal officers and agents there located. Respondent is now and has been maintaining a constant current of trade and commerce in the products purchased by it as hereinabove described, and sold by it to the consuming public in the various States of the United States and in the District of Columbia. In the course and conduct of its business, so controlled and so directed from its principal office in New York City, the respondent is now and has been engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling men's clothing in commerce among and between the various States of the United States and the District of Columbia, as commerce is defined in said act.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, and during a period of more than one year last past, respondent herein, Jonas Schainuck & Son, Inc., in soliciting the sale of and selling its merchandise in commerce, as defined by said act, causes and has caused broadcasts to be made over a radio station or stations in the District of Columbia and in other States and places, by means of which, statements are and have been made, such as the following:

"Divide the Saving—Buy Direct from Schainuck's—Their Factory-to-you Policy Saves you Money"

The said corporation also causes labels to be affixed to its garments and containers for the same, which labels and containers carry statements such as: "Maker to Wearer" and "Direct from our own factory to you," by means of which statements a substantial portion of the purchasing public is led to believe that they secure closer prices and superior quality in dealing direct with a manufacturer rather than a selling agency, retailer, or middleman. In truth and in fact, respondent herein, the said Jonas Schainuck & Son, Inc., does not make,

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manufacture or fabricate the clothing sold by it, or actually own and operate, or directly and absolutely control any factory in which the products sold by it are, or have been, made or fabricated, and is not a manufacturer, but the said corporation purchases its products ready-made from factories which it neither owns, operates, nor controls, and engages solely in distributing and selling clothing made, fabricated, or manufactured by others. The said Jonas Schainuck & Son, Inc., also causes or has caused advertisements and advertising matter to be inserted in newspapers located in various States of the United States and in the District of Columbia, having circulation into or through various other States of the United States or the District of Columbia. In such advertisements and advertising matter there appear, or have appeared, the following statements:

2 SUITS
2 COATS
OR
1 SUIT and
1 COAT for
1 LOW PRICE

We're doubling the value of your clothing dollar to double the number of our clothing friends—and customers!

Instead of just ONE garment you can get TWO for the price you'd usually pay for one

We've thrown every resource into making this the DOUBLE-VALUE event of the year! We want EVERY MAN IN THIS COMMUNITY to come to Schainuck's and get for ONE LOW PRICE—TWO FINE GARMENTS!

2 garments for 1 low price

You can have an extra suit, if you wish or an extra topcoat—both are included in the one price

It's the two-for-one low price which we originated

All wool suits—silk lined for \$6.85

In the radio broadcasts aforesaid the following statements are, or have been made:

Schainuck's is the shop famous for the two garments for one low price

Now Washington men rejoice over their two-for-one low price offer

You "Save as much as you spend" when you buy your clothes at Schainuck's, fellows! That's what Schainuck's two for one low price offer does for you

Buy your choice of any two suits, or a suit or overcoat at Schainuck's * * * both for \$23.50 or \$28.50 * * * That's Schainuck's "Two-for-one low price" offer

Schainuck's, the shop famous for two-garments-for-the-price-of-one

All wool suits—silk lined for \$6.85

These and similar statements, as referred to herein, are, or have been, made and promulgated by means of broadcasts from radio stations located in various States of the United States and in the District of Columbia, which said radio stations are and were of sufficient power

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and strength to convey the words spoken in said broadcasts over, through, and beyond the place from which said broadcasts emanate into other States, or from or into the District of Columbia.

Cards used by salesmen of the said corporation read in part:

Schainuck's
Clothes
2 for 1
Price

In truth and in fact, respondent does not sell to the purchasing public two suits, or two overcoats, or one suit and one overcoat, for the price of one garment; nor does the purchasing public double the price of its clothing dollar when patronizing respondent; nor does a purchaser obtain two fine garments for one price from respondent; nor does a retail purchaser actually receive an additional garment free, or save the cost of an additional suit or overcoat, by or through the medium of such or any similar plan or plans promulgated by respondent, but pays the actual, usual and ordinary retail price of two garments when two garments are bought, or approximately so; neither are respondent's suits offered and sold to the public as "All wool—silk lined for \$6.85," composed of all wool or lined with silk.

PAR. 3. The practice of respondent in falsely marking or branding its products in such a manner as to indicate or represent that they were made, manufactured, or fabricated at its own factory, or a factory controlled, owned, or operated by it; and the practice of disseminating information or advertising, either in newspapers, circulars, cards, letterheads, or other commercial literature, or over the radio through the means of public broadcasts, that it sells "two garments for the price of one" or "two for the value of one," or any similar statement or statements or representations which assert, import, or imply, or have the tendency to import or imply, that the said corporation sells two garments for the price ordinarily charged for one of such garments, or that it sells all wool silk lined suits for \$6.85, are calculated to mislead and deceive, and have, and have had, the capacity, tendency, and effect of misleading and deceiving a substantial portion of the purchasing and consuming public as to the actual manufacturer or fabricator of the clothing so sold by it, and the true quality, value, grade, and price of such clothing, when sold at respondent's said store to the purchasing public, and have the further effect of creating the false impression that purchasers are saved sums of money equivalent to the value of the second of the two garments so sold pursuant to these representations.

Respondent has also placed in the hands of its store managers, agents, salesmen, or representatives, located in the several States in which it operates, and in the District of Columbia, the means of making such false and misleading representations, as above described, to the purchasing public, by which means or sales plans, or any of them, it has increased its own sales of said clothing so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other merchants, the true retail value of which is honestly stated.

PAR. 4. Clothing of sundry competitors of respondent likewise engaged in commerce, as herein set out, is and has been sold and distributed to the consuming public in the various States of the United States and in the District of Columbia, in competition with respondent's clothing but without such false and fictitious representations as to its regular or usual value or retail price or quality, or without offering an additional garment free, or practically free, with each garment sold, or without claiming to be the manufacturers thereof, when such is not the case.

PAR. 5. As a direct consequence of the mistaken and erroneous belief induced by the acts, practices, advertisements, radio broadcasts, and misrepresentations of respondent, as hereinabove detailed, a substantial number of the purchasing public are and have been purchasing a substantial volume of respondent's clothing with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling men's clothing in commerce as defined by said act, who truthfully advertise, represent, and sell their products at the true quality and value thereof to the purchasing public and who do not falsely offer a garment free, or practically free, with each garment sold, or who do not offer two garments for the price or value of one. or two garments for one price, or who do not claim to be the manufacturers thereof, or also do not offer all wool and silk lined garments, when such is not the case. The entire scheme and policy of respondent's method and manner of merchandising as practiced by it, so operated, directed, and controlled at or from its principal place of business in the State of New York, has been and is an unfair method of competition, as defined by said act, with the clothing industry as a whole, and has the further effect of injuring and disturbing fair methods of competition and the course of trade and commerce in that industry. As a result thereof substantial injury has been and is now being done by respondent to the purchasing public and to other clothing merchants in substantial competition in commerce

among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 14, 1936, issued and served its amended complaint in this proceeding upon the respondent, Jonas Schainuck & Son, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed its answer herein, admitting all the material allegations of the amended complaint to be true; waiving all further procedure; and stating that the Commission might, without trial, and without further evidence, make and enter its findings as to the facts and its conclusion based thereon, and issue and serve upon respondent an order to cease and desist from the methods of competition alleged in said amended complaint; and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Respondent, Jonas Schainuck & Son, Inc., a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, has been engaged in the operation of a chain of clothing stores for the sale of men's clothing at retail to the purchasing public for more than one year previous to this date. Some of its stores are located in the State of New York and others are located in other States of the United States and in the District of Columbia. Its executive offices and principal place of business are located at 757 Broadway, in the city of New York, State of New York, from which point the affairs of the entire chain are controlled and directed, including its personnel, advertising, radio broadcasting, sales plans and policies.

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Respondent purchases its clothing already made up into finished garments at wholesale in the State of New York, and in other States. It has caused, and still causes, the said clothing to be shipped or re-shipped to its various retail stores for resale to the purchasing and consuming public. Some of its said stores are located in Washington, D. C., Pittston, Pa., Wilkes-Barre, Pa., Scranton, Pa., Allentown, Pa., Harrisburg, Pa., Hazelton, Pa., and New York City.

In the course and conduct of its business, so controlled and so directed from its principal office in New York City, the respondent is now and has been engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling men's clothing in commerce among and between the various States of the United States and the District of Columbia.

In soliciting the sale of and selling its clothing, respondent has caused broadcasts to be made over radio stations located in the District of Columbia and elsewhere, by means of which statements are made such as:

Divide the saving—Buy direct from Schalnuck's—
Their Factory-to-You Policy Saves you Money

Respondent also causes labels such as "Maker to Wearer" and "Direct from our Factory to You" to be affixed to its garments and the containers in which the same are sold.

The respondent corporation does not own or operate a clothing factory and does not manufacture or fabricate the clothing which it sells, and representations to that effect are calculated to, and do, lead the purchasing public to believe respondent does so manufacture the clothing sold by it, thereby permitting them to receive better prices and better workmanship from respondent than from other retailers who do not represent themselves as manufacturers.

The respondent has also advertised in newspapers of wide and general circulation that it sells "All Wool Suits—Silk Lined for \$6.85." These suits have been subjected to chemical analysis by a textile expert and have been found to contain a large percentage of cotton and rayon, and the lining described as "silk" contained no silk whatever.

The respondent also advertises through the medium of newspapers of wide circulation, by circulars and hand bills, and over the radio, by means of which representations are made to the consuming public such as:

2 SUITS
2 COATS
or
1 SUIT and
1 COAT for
1 LOW PRICE

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We're doubling the value of your clothing dollar to double the number of our clothing friends—and customers!

Instead of just ONE garment you can get TWO for the price you'd usually pay for one

We've thrown every resource into making this the DOUBLE-VALUE event of the year! We want EVERY MAN IN THIS COMMUNITY to come to Schainuck's and get for ONE LOW PRICE—

TWO FINE GARMENTS!!!

2 garments for 1 low price

You can have an extra suit, if you wish or an extra topcoat—both are included in the one price

It's the two-for-one low price which we originated

In the radio broadcasts aforesaid the following statements are, or have been, made:

Schainuck's is the shop famous for the two garments for one low price

Now Washington men rejoice over their two-for-one low price offer

You "Save as much as you spend" when you buy your clothes at Schainuck's, fellows! That's what Schainuck's two-for-one low price offer does for you

Buy your choice of any two suits, or a suit or overcoat at Schainuck's * * * both for \$23.50 or \$28.50 * * * That's Schainuck's "Two-for-one

low price" offer

Schainuck's, the shop famous for two-garments-for-the-price-of-one

Cards used by salesmen of the said corporation read in part:

Schainuck's

Clothes

2 For 1

Price

The use by the respondent of these representations leads the purchasing and consuming public to believe, and has a tendency to create the impression, that by patronizing respondent's stores they will obtain two suits, or two overcoats or one of each of those garments, for the price they would ordinarily pay at other retail stores for only one garment of similar grade and workmanship, thus doubling the value of the customer's clothing dollar, or obtain an extra suit or overcoat without additional cost, a conclusion which is entirely erroneous. Respondent's average price to the public for any two of its garments is approximately double the price at which one garment of similar quality and workmanship is offered for sale and sold to the public by other retail stores dealing in clothing.

The use by respondent of the aforesaid acts and practices, as herein related, are false and misleading and have the capacity and tendency to deceive and may deceive and mislead ultimate purchasers into buying suits, overcoats, or other garments from respondent in the belief that they are dealing direct with the manufacturer thereof, and are thus obtaining better value and workmanship for

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the price paid than they would from dealers who do not falsely make such representations, or that respondent is a much larger organization than it actually is. These representations also mislead and deceive the public into buying certain of respondent's suits in the belief that they are "all wool and silk lined" when the same are not made of these materials. The public is also misled and deceived, or may be so misled and deceived, that they are doubling their clothing dollar by patronizing respondent's stores, or obtaining a garment free or obtaining two garments for which it would ordinarily pay for one garment of similar grade and workmanship at other retail stores.

The use by respondent of the aforesaid practices have the tendency and capacity to, and do, unfairly divert trade from competitors engaged in selling men's clothing in commerce between and among the various States of the United States who truthfully represent the maker or manufacturer thereof, and who truthfully represent the nature, type, or quality of the material from which their garments are made, and who truthfully represent the true retail value thereof and who do not falsely offer to double the value of the customer's clothing dollar; or to give the customer an additional garment free, or without extra cost, or two garments for the price the customer ordinarily pays for one, or makes promises or representations of similar and like import; and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the amended complaint filed herein on May 12, 1936, and answer thereto filed June 3, 1936, by Jonas Schainuck & Son, Inc., admitting all the material allegations of the said amended complaint to be true; waiving all further procedure and stating that the Commission without trial and without further evidence might make, enter, issue and serve upon the said respondent its findings as to the facts and conclu-

sion based thereon, and an order to cease and desist from the unfair methods of competition charged in the amended complaint; and the Commission having duly considered the said amended complaint and answer, and now being fully advised in the premises.

It is ordered, That the respondent, Jonas Schainuck & Son, Inc., its officers, servants, representatives and employees, in connection with the sale or offering for sale by it in interstate commerce of articles of clothing, or similar merchandise, forthwith cease and desist from:

Representing, directly or by inference, through any means whatsoever:

(1) That said articles of clothing or similar merchandise are all wool or all silk, when such are not the facts.

(2) That it is the maker, manufacturer or fabricator of said clothing unless and until it actually owns, operates or controls the factory or factories in which such clothing is manufactured.

(3) That the price at which two suits or other garments are offered for sale or sold is the regular and customary price of one of said suits or garments.

(4) That the price at which two of such suits or garments are sold or offered for sale is the same or an approximate equivalent price at which other retail stores regularly and customarily sell one suit or garment of similar grade, workmanship and quality.

(5) That upon the purchase of one suit or garment, it gives a suit or garment free, or approximately free.

It is hereby further ordered, That the respondent shall within 60 days from the date of the service upon it of this order file with this Commission its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF

A. C. HYND CORPORATION

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

Docket 2781. Complaint, Apr. 23, 1936—Decision, July 23, 1936

Where a corporation, engaged in the manufacture of a germicide for eczema and other skin ailments, and in sale and distribution thereof to purchasers in various States—

Falsely represented through advertisements in periodicals and publications and other forms of printed matter, and by radio broadcast, that said preparation was a competent remedy for eczema, athlete's foot, and various other skin ailments, and that use thereof would prevent infections from hiding, and kill twenty-seven different kinds of disease germs, or destroy the responsible parasite causing skin eruptions and ailments, and instantly stop itching and soreness, and start rapid healing, and banish every trace of red or cracked skin, and make it healthfully clear and smooth again, through such statements as "The quick, safe way to end sore, raw, scaly skin of Eczema", "* * * instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again", "Tests at a leading University proved KU-RILL kills 27 different kinds of germs," "Infections have no chance to hide from KU-RILL", "FOR ATHLETE'S FOOT * * * KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin", etc.;

With result that purchasers and prospective purchasers were induced to buy said alleged remedy in preference to similar medicated preparations and treatments for relief of eczema and other skin ailments, sold and offered by competitors who do not misrepresent the same and falsely claim that they have merits and capacity to achieve results, as claimed by it for its said product, and with effect of diverting to it trade from its competitors who do not misrepresent efficacy of their products; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Harold L. Bodamer, of Buffalo, N. Y., 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 A. C. Hynd Corporation, a corporation, hereinafter referred to as respond-

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ent, 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. C. Hynd Corporation, 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 located at 320 Franklin Street, in the city of Buffalo, in the State of New York. Respondent for more than 1 year last past has been and still is engaged in the manufacture of a pharmaceutical preparation known as "Ku-Rill", made of a mixture of amyl acetate, formaldehyde, alcohol (denatured), color, sodium chlorid, aromol oil and pphenyl, 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 in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. There has been for more than 1 year 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 in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture of germicides and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting the sale of and selling "Ku-Rill" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than 1 year last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and 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, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

For universal use. Destroying Poison Germs and Preventing Contagion.

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This wonderful Germicide is harmless, powerful, yet safe as a sanitary protection without an equal and is used as a safe, reliable, and speedy remedy for skin and tissue diseases in general.

Recommended and endorsed by leading physicians.

The quick, safe way to end sore, raw, scaly skin of Eczema.

No matter how long you've suffered with itching, burning, fiery Eczema and what treatments you've unsuccessfully tried—

One application of powerfully healing, soothing KU-RILL instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again.

Tests at a leading University proved KU-RILL kills 27 different kinds of germs.

Few skin diseases can resist its great healing magic.

WANTED: Sufferers from Athlete's Foot, Eczema, Barber's Itch, Psoriasis, Pimples. We want every person who is suffering from these and other skin ailments to try a 50¢ bottle of KU-RILL, the powerful germicide that kills 27 different kinds of disease germs.

KU-RILL has been used for over 35 years by doctors in treating stubborn skin ailments—and its effectiveness has been tested at the University of Buffalo.

Infections have no chance to hide from KU-RILL.

FOR ATHLETE'S FOOT—Used full strength, this marvelous germicide will relieve quickly and surely the most stubborn case. Wash the affected parts with it twice a day. KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin. It excels all others for that feeling of hygienic cleanliness.

PAR. 3. The statements and representations set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief:

(1) That "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;

(2) That "Ku-Rill" kills twenty-seven different kinds of disease germs;

(3) That "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;

(4) That "Ku-Rill" will instantly stop itching and soreness of the skin;

(5) That "Ku-Rill" starts rapid healing after use;

(6) That a few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again;

(7) That "Ku-Rill" is without an equal;

(8) That "Ku-Rill" is better than and excels all other similar products and products for the same and similar purposes;

(9) That "Ku-Rill" will prevent infections from hiding; whereas, in truth and in fact, "Ku-Rill" is not a competent remedy for

eczema, athlete's foot, psoriasis, pimples, and other skin ailments. "Ku-Rill" does not kill twenty-seven different kinds of disease germs, or destroy the parasite that causes skin eruptions and skin ailments, or instantly stop itching and soreness of the skin. Nor does "Ku-Rill" start rapid healing after use, or banish every trace of red, cracked skin and make it healthfully clear and smooth again. It is not true that "Ku-Rill" is without an equal and that it is better than and excels other germicides and products sold and used for the same and similar purposes. Nor does "Ku-Rill" prevent infections from hiding.

PAR. 4. There are among the competitors of the respondent in interstate commerce and have been for more than 1 year last past, manufacturers of germicides and similar products who truthfully advertise and represent the merits and the therapeutic value of their products. There are also among such competitors of the respondent, and have been for more than 1 year last past, manufacturers of germicides and similar products who do not advertise and otherwise represent that such products have the merits or the therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product 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.

Said 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, on the 23rd day of April 1936, issued and served its complaint in this proceeding upon the respondent, A. C. Hynd Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its president, A.

C. Hynd, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, A. C. Hynd Corporation, 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 located at 320 Franklin Street, in the city of Buffalo, in the State of New York. Respondent for more than 1 year last past has been and still is engaged in the manufacture, among other things, of a germicide known as "Ku-Rill," which it sells and distributes to purchasers residing in States other than the State of New York, as a treatment for eczema and other skin ailments.

When said product is sold, respondent transports or causes the same to be transported from its place of business in the city of Buffalo, in the State of New York, to the purchasers thereof located in States of the United States other than the State of New York and the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade and commerce in said product so manufactured and distributed by the respondent, between and among the various States of the United States and in the District of Columbia.

The respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture, distribution, and sale of similar medicinal preparations and treatments for the relief of eczema and other skin ailments in interstate commerce.

PAR. 2. Respondent's said product, known as "Ku-Rill," is a mixture of amyl acetate, formaldehyde, alcohol (denatured), color, sodium

chlorid, aromol oil and pphenyl. The product is packed, shipped, distributed, and sold in six ounce bottles for use as a germicide. In marketing its product respondent uses the trade-mark "A. C. H."

PAR. 3. In soliciting the sale of and selling "Ku-Rill" and for the purpose of creating a demand upon the part of the consuming public for said product, respondent has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter. It has also, from time to time, advertised its product by radio broadcast. In said ways and by said means respondent has made to the general public many exaggerated, unfair, false, and misleading statements with reference to the alleged therapeutic value of its product and the effect of it upon the users thereof. Typical of the representations that have thus been made by the respondent concerning its product are the following:

For universal use. Destroying Poison Germs and Preventing Contagion.

This wonderful Germicide is harmless, powerful, yet safe as a sanitary protection without an equal and is used as a safe, reliable and speedy remedy for skin and tissue diseases in general.

Recommended and endorsed by leading physicians.

The quick, safe way to end sore, raw, scaly skin of Eczema.

No matter how long you've suffered with itching, burning, fiery Eczema and what treatments you've unsuccessfully tried—

One application of powerfully healing soothing KU-RILL instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again.

Tests at a leading University proved KU-RILL kills 27 different kinds of germs.

Few skin diseases can resist its great healing magic.

WANTED: Sufferers from Athlete's Foot, Eczema, Barber's Itch, Psoriasis, Pimples. We want every person who is suffering from these and other skin ailments to try a 50¢ bottle of KU-RILL, the powerful germicide that kills 27 different kinds of disease germs.

KU-RILL has been used for over 35 years by doctors in treating stubborn skin ailments—and its effectiveness has been tested at the University of Buffalo.

Infections have no chance to hide from KU-RILL.

FOR ATHLETE'S FOOT.—Used full strength, this marvelous germicide will relieve quickly and surely the most stubborn case. Wash the affected parts with it twice a day. KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin. It excels all others for that feeling of hygienic cleanliness.

PAR. 4. The above statements, together with many other similar statements appearing in respondent's advertising literature, purport to be descriptive of the remedial and curative quality of respondent's product and have the tendency and capacity to mislead and deceive

purchasers and prospective purchasers of respondent's product into the erroneous belief that:

(1) "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;

(2) "Ku-Rill" kills twenty-seven different kinds of disease germs;

(3) "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;

(4) "Ku-Rill" will instantly stop itching and soreness of the skin;

(5) "Ku-Rill" starts rapid healing after use;

(6) A few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again;

(7) "Ku-Rill" will prevent infections from hiding;

whereas, in truth and in fact, "Ku-Rill" is not a competent remedy for eczema, athlete's foot, psoriasis, pimples, and other skin ailments. The use of "Ku-Rill" does not and will not prevent infections from hiding nor will it kill 27 different kinds of disease germs or destroy the parasite that causes skin eruptions and ailments; nor does "Ku-Rill" instantly stop itching and soreness of the skin. "Ku-Rill" does not start rapid healing after use, and banish all trace of red, cracked skin making it healthfully clear and smooth again.

PAR. 5. There are among the competitors of the respondent, manufacturers and distributors of germicides and other similar medical preparations and treatments for skin ailments who do not misrepresent their products and who do not falsely claim that said products have the merits and capacity to achieve results such as the respondent herein claims for its product, as above described.

PAR. 6. As a result of the erroneous belief on the part of purchasers and prospective purchasers, as set forth in paragraph 4 hereof, the purchasers and prospective purchasers have been and are induced to buy respondent's alleged remedy in preference to similar medicated preparations and treatments for the relief of eczema and other skin ailments sold and offered for sale by its competitors as aforesaid. Thereby trade is diverted to respondent from its competitors who do not misrepresent the efficacy of such competitive products and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent, and are unfair methods of competition in commerce in violation of

Order

an Act of 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer the draft of a proposed substituted answer annexed to the said motion, and the Commission having duly considered the said motion,

It is hereby ordered, That the said motion be, and the same is hereby granted; that the answer be, and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue 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 record and being now fully advised in the premises:

It is hereby further ordered, That the respondent, A. C. Hynd Corporation, a corporation, its officers, agents, servants, representatives and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of its germicide known as "Ku-Rill" do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

- (1) That "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;
- (2) That "Ku-Rill" kills twenty-seven different kinds of disease germs;
- (3) That "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;
- (4) That "Ku-Rill" will prevent infections from hiding;

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(5) That "Ku-Rill" will instantly stop itching and soreness of the skin;

(6) That "Ku-Rill" starts rapid healing after use;

(7) That a few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again; and from making any other representations of similar tenor or import.

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
LUDEN'S INC.

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

Docket 1789. Complaint, Apr. 28, 1930—Decision, July 24, 1936.¹

Where a corporation, engaged in the manufacture and sale of candies, including assortments composed of chocolate covered penny candies of uniform size, shape, and quality, together with a number of larger pieces, and, in some instances, other articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, enclosed concealed centers of which differed in color from those of the majority, and by purchase of last piece of said covered candies included therein—

Sold said assortments, in competition with others engaged in manufacture, sale and distribution of candies in commerce among the various States, together with explanatory display cards for retailers' use in advising prospective purchasers of the nature of said merchandising plan, to wholesalers and jobbers, with result that said wholesalers' and jobbers' retail dealer-vendees exposed said assortments for sale in connection with such explanatory cards and sold such candies to purchasing public in accordance with said plan, whereby purchaser of candies with the different centers and purchaser of last piece in assortment procured and received, free of charge, one of the larger pieces or articles of merchandise included therewith, and with effect of thereby supplying to and placing in the hands of others a means of conducting a lottery wherein such larger pieces or articles were distributed to the purchasing public wholly by lot or chance, in connection with its said sales plan, and of thus inducing many of the consuming public to purchase its said candies in preference to those of its competitors because of the chance of obtaining such larger pieces or other articles free of charge, and with tendency so to do, and in violation of public policy :

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

Mr. Henry C. Lank for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Luden's Inc., a corporation, hereinafter referred to as respondent, has been

¹ Order published as modified as of Nov. 4, 1936.

A prior cease and desist order in this matter made as of April 3, 1934 (See 18 F. T. C. 282), was vacated and set aside, etc., by order of the Commission on July 24, 1936.

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 Reading, State of Pennsylvania. It is now and for more than two 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 Reading, 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 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/or certain other merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate covered candies in the following manner:

The majority of the said chocolate covered candies in said assortments have 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 assortment retail at the price of 1¢ 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 heretofore referred to and/or articles of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate covered candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the last piece of candy in said assortments are thus to pro-

cure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with 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 or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitle the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of said larger pieces of candy and/or article of merchandise free of charge.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid 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 the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. 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 and/or articles of merchandise free of charge.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on April 28, 1930, issued, and on April 29, 1930, served, its complaint in this proceeding upon the respondent,

Findings

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Luden's Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondent filed answer to said complaint on or about May 29, 1930, and thereafter, on or about February 28, 1934, the respondent moved to withdraw the answer theretofore filed on or about May 29, 1930, and offered for filing a substitute answer, which motion was granted and a substitute answer was received and filed on March 28, 1934. In accordance with the terms of said substitute answer the Commission issued its order directing the respondent to cease and desist from the unfair methods of competition charged in the said complaint. Thereafter, following a further investigation by the Commission, the respondent, Luden's, Inc., tendered a third answer, dated June 20, 1936, in which it states that it desires to, and hereby waives, hearing on the charges set forth in the complaint herein; that it admits all the material allegations of the complaint to be true; that it consents that the Commission, without hearing and without further evidence and without intervening procedure, may make, issue, and serve upon it its findings as to the facts and conclusion and an order to cease and desist from the methods of competition alleged in the complaint, and the Commission having issued its order in this matter nunc pro tunc as of June 19, 1936, vacating and setting aside the order to cease and desist heretofore issued in this proceeding on or about April 3, 1934, and this proceeding having regularly come on for final hearing on the said complaint and on the said answer of respondent dated June 20, 1936, and the Commission having duly 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, Luden's Inc., 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 Reading, State of Pennsylvania. It is now and for several 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 Reading, 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 corporations and with individuals and partnerships 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 and has sold 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 a uniform size, shape, and quality, together with a number of larger pieces of candy and in some instances certain other articles of merchandise, which larger pieces of candy or articles of merchandise are to be given as prizes to purchasers of said chocolate covered candies in the following manner:

The majority of the said chocolate covered candies in said assortments have 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 of said assortment retail at a price of 1¢ each, but the purchasers who procure one of said candies having a center of 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 heretofore referred to or the other article of merchandise hereinbefore referred to. The purchaser of the last piece of aforesaid chocolate covered candies of a uniform size, shape, and quality in each of said assortments is entitled to receive and is to be given free of charge one of the larger pieces of candy or articles of merchandise heretofore referred to. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy and the purchaser of the last piece of candy in said assortments are thus to procure one of the said larger pieces of candy or articles of merchandise wholly by lot or chance.

Respondent furnishes to said wholesale dealers and jobbers with 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 or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitle the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of said larger pieces of candy or the other article of merchandise free of charge.

PAR. 3. Aforesaid wholesale dealers and jobbers of respondent resell said assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan whereby the pur-

chaser 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 the said larger pieces of candy or articles of merchandise hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy or articles of merchandise are distributed to the purchasing public wholly by lot or chance in connection with respondent's said sales plan.

PAR. 4. 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 said larger pieces of candy or other articles of merchandise free of charge.

PAR. 5. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraph 2 hereof, are contrary to public policy.

CONCLUSION

The practices of said respondent under the conditions and circumstances hereinbefore described 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on April 28, 1930, and served on April 29, 1930, the answer of the respondent dated June 20, 1936, admitting the truth of the material allegations of the complaint and waiving all further proceedings herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated an Act of 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, Luden's Inc., its officers, agents, representatives, and employees, in the offering for sale, sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

¹ Published, as modified, as of November 4, 1936.

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy 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 packages or assortments of candy which are used or may be 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 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 a different color, together with larger pieces of candy or other articles of merchandise, which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing to wholesale dealers and jobbers display cards, either with 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 and jobbers 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 upon purchasing the last piece of candy in the package or assortment a larger piece of candy or other article of merchandise will be given as a prize.

It is further ordered, That the respondent, Luden's 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 and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

23 F. T. C.

IN THE MATTER OF
WESTERN RESERVE DISTILLING COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2418. Complaint, May 27, 1935—Order, July 27, 1936

Consent order requiring respondent corporation, its agents, etc., in connection with the offer for sale or sale in interstate commerce of whiskies, gins, and other spirituous beverages, forthwith to cease and desist from representing, through use of word "Distilling" in its corporate name, on stationery, advertising, or labels attached to bottles in which it ships and sells its said products or in any other way by word or words of like import, that (a) it is a distiller of whiskies, gins, and other such beverages, or (b) said whiskies, etc., were by it made through process of distillation, or (c) it owns, operates, or controls a place or places where such beverages are made by such process, unless and until it shall own, operate, or control a place or places where such whiskies, etc., are by it made, through process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until manufacture thereof is complete; and

Ordered further, that complaint be, and same is, dismissed as to count 2 (National Industrial Recovery Act count).

Mr. PGad B. Morehouse for the Commission.

Mr. R. E. Joyce, of Washington, D. C., 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 Western Reserve Distilling Co., 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 in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business in the city of Cincinnati, in said

¹Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.

State. It is now, and for more than 1 year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured

through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business in the city of Cincinnati, in said State. It is now, and for more than 1 year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PARS. 2, 3, 4, and 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

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PAR. 6. Under and pursuant to title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, c. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulations of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said Code in the following words, to wit:

That said Code will tend to effectuate the declared policy of title I of the National Industrial Recovery Act as set forth in section 1 of said act in that the terms and provisions of such Code tend: (a) To remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations, and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of article V of said Code became and still is one of the standards of fair compe-

tion for the Distilled Spirits Rectifying Industry and is binding upon every member of said industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

Section 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission, or inference it tends to create a misleading impression.

PAR. 7. The use by respondent of the word "Distilling" in its corporate name, printed upon its stationery and advertising and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort, or wash, that the spirituous beverages by it so sold and transported have been prepared and bottled by the original distillers thereof, and that the whiskies, gins, and other spirituous beverages sold by respondent have been manufactured and distilled by it from mash, wort, or wash as aforesaid, all contrary to the provisions of section 1, article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the distilled spirits rectifying industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of section 3 of title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the complaint hereinbefore issued and served upon Western Reserve Distilling Company, a corporation, respondent herein, and the said respondent's written answer made thereto, waiving the taking of testimony, findings as to the facts, filing of briefs, oral argument and all other intervening procedure, and consenting that an order shall issue herein for it to cease and desist from methods of competition charged in the complaint, and the Commission being fully advised in the premises, having thereupon concluded that respondent has violated Section 5 of an Act of Congress approved

Order

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

It is now ordered, That the respondent, Western Reserve Distilling Company, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, forthwith cease and desist from:

Representing through the use of the word "Distilling" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import representing, (a) that it is a distiller of whiskies, gins, and other spirituous beverages; or (b) that the said whiskies, gins, and other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, gins, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

It is further ordered, That the aforesaid complaint be and the same is hereby dismissed as to count 2 thereof.

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

Syllabus

IN THE MATTER OF
WESTERN AMERICAN DISTILLERS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2407. Complaint, May 23, 1935—Decision, July 29, 1936

Where a corporation engaged as liquor rectifier and wholesaler in purchasing and bottling whiskies, gins, and other spirituous beverages and in purchasing its distilled spirituous requirements from other distillers, and in making gin by redistillation of purchased alcohol over juniper berries and other aromatics, and neither owning, operating, nor controlling any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, nor distilling any beverages—

Used on stationery and placed on labels attached to bottles in which it sold and shipped its said beverages, other than gins, its corporate name, including word "Distillers" and words "Bottled (or Bottled and Proofed or Blended and Bottled or Prepared and Bottled) by Western American Distillers Corp.", and failed to negative misleading and false impression or assertion that it was a distiller through back labels on some bottles showing State in which liquor was distilled;

With effect of misleading and deceiving dealers and purchasing public into the belief that the whiskies, etc., sold by it were by it made and distilled from mash, wort, or wash, as long understood from word by trade and public, and of inducing dealers and purchasing public, substantial portion of which prefers to buy liquors from the actual distillers thereof, acting in such belief, to buy its said whiskies and other spirituous beverages bottled and sold by it, and of thereby securing an advantage, by reason of prestige attaching to distiller in wholesale trade, and control over product by distiller, associated therewith in mind of trade and public, over concerns who do not falsely purport to be manufacturers, and with capacity and tendency so to mislead, etc.; and

With result of diverting trade to it from truthful competitors, among whom there are (1) those who manufacture and distill, from mash, wort, or wash, whiskies, etc., sold by them, and who, as distillers, investment and expenses of which are greater than those of rectifier, truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling," as part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship their products, and (2) competitors engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., who do not use such words as aforesaid, and who do not, by their corporate name or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, etc.; to the substantial injury of substantial competition in commerce:

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed by reason of decision in *A. L. A. Schechter Poultry Corp. v. U. S.*, 295 U. S. 495.

Complaint

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Albert A. Axelrod, of San Francisco, Calif., 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 Western American Distillers 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 in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation originally organized under the name of American Distillers Corporation, later changing said name to Western American Distillers Corporation, existing and doing business under the laws of the State of California with its office and principal place of business in the city of San Francisco in the said State. It is now and for more than 1 year last past has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, vermouth, gins, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business in San Francisco aforesaid into and through various States of the United States to the purchasers thereof consisting of wholesalers and retailers, some located within the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and at all times since its organization has been, in substantial competition with other corporations and

individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, vermouth, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, vermouth, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid respondent has, upon its said premises, a still which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating internal revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distillers" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by use of the word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, vermouth, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact respondent is not a distiller, does not distill the said whiskies, vermouth, or other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still as aforesaid in the rectification of alcoholic spirits by redistil-

lation over juniper berries and other aromatics, respondent does not distill the gins by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where such beverages are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, vermouth, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery" "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, vermouth, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, vermouth, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, vermouth, gins, and other spirituous beverages rectified, blended, and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, as aforesaid, of whiskies, vermouth, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the

Complaint

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 2

PARAGRAPH 1. Respondent is a corporation originally organized under the name of American Distillers Corporation, later changing said name to Western American Distillers Corporation, existing and doing business under the laws of the State of California with its office and principal place of business in the city of San Francisco in the said State. It is now and for more than 1 year last past has been engaged in the business of purchasing, rectifying, blending and bottling whiskeys, vermouth, gins, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business in San Francisco aforesaid into and through various States of the United States to the purchasers thereof consisting of wholesalers and retailers, some located within the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and at all times since its organization has been, in substantial competition with other corporations and individuals, partnerships, and firms engaged in the manufacture by distillation of whiskeys, vermouth, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskeys, vermouth, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PARS. 2, 3, 4, and 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of para-

graphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

PAR. 6. Under and pursuant to title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, c. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the distilled spirits rectifying industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to affectuate the declared policy of title I of the National Industrial Recovery Act as set forth in section 1 of said act in that the terms and provisions of such Code tend: (a) To remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the

National Industrial Recovery Act aforesaid, the following provision of article V of said Code became and still is one of the standards of fair competition for the distilled spirits rectifying industry and is binding upon every member of said industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

Section 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission, or inference it tends to create a misleading impression.

PAR. 7. The use by respondent of the word "Distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort, or wash and that the spirituous beverages by it so sold and transported have been bottled by the original distillers thereof, all contrary to the provisions of section 1, article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the distilled spirits rectifying industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of section 3 of title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 23, 1935, issued, and on May 27, 1935, served its complaint in this proceeding upon respondent Western American Distillers Corp., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by Edward W.

Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, heretofore duly designated by it; and by PGad B. Morehouse, attorney for the Commission, before John W. Addison, an examiner of the Commission thereafter by the Commission duly substituted to take testimony in the place and stead of the said W. W. Sheppard; and in defense of the allegations of the complaint by Albert A. Axelrod, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint; brief of respondent and all oral arguments having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Western American Distillers Corp., is a corporation existing and doing business under and by virtue of the laws of the State of California as a rectifier and a wholesaler of liquors, having its principal office and place of business at 110 First Street in the city of San Francisco, California. It purchases and bottles whiskies, gins, and other spirituous beverages and sells the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies,

gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages, or the mixing of other ingredients with whiskies, but reducing proof of whisky by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they came from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the _____ Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery, or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by _____ Company". If, in the distillery's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by _____ Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-567" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's permit, and at least one large distiller, namely, Hiram Walker & Sons, uses its "R number" exclusively. Knowledge of these details is not widespread among the retail trade, and is very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

It is not always possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

PAR. 3. This respondent purchases its distilled spirituous requirements from other distillers, rectifies, bottles, and sells it in interstate commerce. In the course and conduct of its business respondent uses its aforesaid name on its stationery and places on the labels attached to the bottles in which it sells and ships its said beverages, other than gins, the words "* * * (Or Bottled And Proofed Or Blended And Bottled Or Prepared And Bottled) By Western American Distillers Corporation * * *". The label on a rum bottled and proofed by respondent states that the rum is distilled by A. H. Riise Company in the Virgin Islands. In some cases respondent also places labels on the back of its whisky bottles showing in what State the whisky is distilled. On its labels for gins purchased by it, it places the words "* * * Bottled By Western American Distillers Corporation * * *"; on its labels for its gins that are mixed or compounded by it from purchased alcohol and aromatics it places the words "* * * Made and Bottled By Western American Distillers Corporation * * *", and on its labels for gins which are the distillate by its own redistillation of neutral spirits with aromatics it places the words "* * * Distilled Dry Gin * * * Distilled By Western American Distillers Corporation * * *".

Like many other rectifiers, this respondent bottles certain brands of liquors for customers, placing the customer's label on the whiskies or liquors at the customer's request. These are known as "private brand labels", do not contain the offending name, and with them this case is not concerned. Commission's exhibits contain numerous specimens of all of these labels. The impression that respondent is a distiller, to be gained from a reading of these labels, is not negated by the fact that on the back of the bottles in some cases are back labels showing the State in which the liquor was distilled, as presumptively and actually real distillers may and do have distilleries located in more than one State and in States other than the sites of their rectifying plants.

Respondent is a rectifier and not a distiller. It does not own, operate, or control any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, and it does not distill any beverage. It has a still which it uses in making gin by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, but this redistillation does not make respondent a distiller as defined by United States Code, title 26,

section 241, regulating internal revenue, nor as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been and still were actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "distillers" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of making beverages by original distillation from grain, fruit, or vegetable mash.

In general the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondent produces its gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels: "Distilled by ----- Distillers". There are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondent, yet it is all done in a distillery and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumer with respect to such products.

Existing regulations and regulations proposed under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof

corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers" or "distilling" as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. A substantial portion of the purchasing public does prefer to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and such representation is a misrepresentation in fact, and has a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondent's products in preference to the products of truthful competitors.

The opinion and preference of the consuming public is illustrated by the following brief references to representative testimony on this point:

A person that distills liquor, I would imagine, would attempt to put forth a better product because of the fact his reputation as a distiller would be at stake, whereas, a person who blends liquors and sells them just as a distributor, I would imagine, that if the liquor was not just exactly right, he would say his reputation as a manufacturer was not concerned;

Generally speaking, I prefer to buy it from the distiller, I say that generally; if you happened to know who the rectifier was and he shows you what he was blending, then you would know what distiller made the product and what was going into the blend; in that case you might be just as well satisfied, but, generally speaking, "distillery" would mean more to me;

If he saw the word "distillers" in the firm name of a concern on its labels, that would influence him to purchase it over another product which did not have on it those words, because he would have confidence that that firm would be more certain to deliver a product that had no deleterious matter in it for beverage purposes, and he would take it that such firm had actually distilled and bottled it and that would be his reason for buying from them.

The testimony clearly showed and the Commission finds that a prestige attaches in the minds of the wholesale trade to the distiller, and that that prestige is an advantage in overcoming sales resistance; that in the mind of the wholesale trade and the public, the belief that a distiller controlling the making of such products from start to finish,

with all the ingredients going into them within its own establishment, is an advantage, together with uniformity; and that the use of the word "distilling" or "distiller" in a trade or corporate name of a concern gives it an advantage over concerns who do not pursue or practice such characterizations, and who do not purport to be manufacturers when they are not.

The Commission therefore finds that the representations of respondent through use of the word "Distillers" in its corporate name as aforesaid is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The complaint was issued in two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act, and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of section 3 of title I of the National Industrial Recovery Act, which was invalidated by the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation, et al. v. United States* (295 U. S. 495). For that reason the Commission has dismissed the complaint as to count 2 thereof.

PAR. 7. Because of existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), and which regulations are presently expected to become effective as of August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "distilled gin", and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

Order

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on May 23, 1935, and served on May 27, 1935, the answer of respondent, testimony and evidence taken before W. W. Sheppard and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the charges of the complaint and in opposition thereto, 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 Western American Distillers Corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, except gins produced by a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through the use of the word "Distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

Syllabus

IN THE MATTER OF
 BARAGER-WEBSTER COMPANY

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

Docket 2506. Complaint, July 31, 1935—Decision, Aug. 3, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight" goods and "draw" or "deal" assortments, in two of which consumer-purchaser received, in accordance with number pushed or punched by chance and card's legend, one or two suckers or one of larger candy pieces or bars, or other article of merchandise for his penny, or choice of any bar in assortment, or two chocolate pellets, or box of chocolate angel food, and in third of which five-cent purchaser similarly received one or two candy bars or box of chocolate fudge, and, for last purchase, large box of chocolates—

Sold said various assortments and cards to wholesalers, jobbers and retailers, knowingly packed and designed for display, offer and sale, without alteration, addition or rearrangement, to consuming purchasing public, by means of said cards and by lot or chance, by retailers, stores of which, in case of the small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of winning;

With result that competitors dealing in "straight" goods candy, who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in "straight" goods and able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution of candy to public by lot or chance to meet constant demand for candy thus sold, sale of "straight" goods candy showed a marked decrease whenever and wherever lottery or prize package candy appeared in its markets by reason of gambling feature connected therewith, public and competitors were prejudiced and injured, and there was a restraint upon and a detriment to the freedom of fair competition in said industry and a violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Walter C. Hughes, of Chicago, Ill., for respondent.

Complaint

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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 Barager-Webster Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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 is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business in the city of Eau Claire, State of Wisconsin. Respondent for several years last past has been engaged in the manufacture of candy, and in the sale and distribution thereof through wholesale and retail dealers located at points in the various States of the United States, and causes the said products when so sold to be transported from its principal place of business in the city of Eau Claire, Wis., to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business respondent is in competition with other corporations, and with individuals and partnerships engaged in the manufacture of candy 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 herein respondent sells and has sold to wholesale 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.

Several of the said assortments are composed of a number of small pieces of candy, a number of larger pieces of candy, and a small package of candy or another article of merchandise, together with a device commonly called a push card. The larger pieces of candy and the small package of candy, or the other article of merchandise, are to be given as prizes to purchasers obtaining certain specified numbers from said card in the following manner:

The sales are one cent each, and when a push is made a number is disclosed. There are as many separate numbers on the card as there

are pushes. The numbers begin with one, but are not arranged consecutively. The card bears a statement, or statements, informing the prospective customer as to which numbers receive the small pieces of candy, and the number of such pieces, and which numbers receive the larger pieces of candy. The purchaser of the last push on the card ordinarily receives the small package of candy or the other article of merchandise. All purchasers from said card receive a piece of candy, but certain purchasers depending upon the number printed on the push selected by them receive more than one piece of candy, or one of the larger pieces of candy. The numbers on such card are effectively concealed from the purchasers, or prospective purchasers, until a push or selection has been made and the particular push separated from the card. The additional pieces of candy and the larger pieces of candy in said assortments are thus distributed to purchasers of pushes from said card wholly by lot or chance.

The respondent manufactures, sells, and distributes several assortments involving the use of a push card in the resale of said assortments to the consuming public, all of which make use of the same sales plan or principle, but each of which varies somewhat in detail. In addition to the assortment and sales plan described just above some of the assortments consist of a number of bars of candy rather than small pieces of candy and sales are 5 cents each, and the prize winners or lucky purchasers receive more than one bar of candy for the price of 5 cents.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale in connection with the aforesaid push cards and sell said candy 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 product in accordance with the sales plan 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 additional or larger pieces of candy or packages of candy or an article of merchandise in the manner alleged. Such games of chance, and the sale along with the sale of such candy of such chance to procure such additional or larger pieces of candy or packages of candy in the manner alleged are contrary to the established public policy of the several States of the United States 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, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled 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 additional or larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 respondent who do not use the same or equivalent methods. 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 methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods 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 equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods, 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 methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 31, 1935, issued and served a complaint upon the respondent, Barager-Webster Company, a corporation, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint, the respondent having failed to file answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, theretofore duly designated by it. The respondent was represented by Walter C. Hughes, Esq., but offered no testimony or evidence in defense of the charges of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence and brief in support of the complaint, respondent having failed to file any brief, and through its counsel having indicated it did not desire to orally argue the matter, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Barager-Webster 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 Eau Claire, Wis. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in Eau Claire and in the sale and distribution of said candy to wholesale dealers and jobbers and, in a few instances, to retailers located in the State of Wisconsin and other States of the United States. It causes said candy, when sold, to be shipped or transported from its principal place of business in the

State of Wisconsin to purchasers thereof in 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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent was an assortment designated as "Webster's Big Chief Tom-Tom Draw" composed of a number of pieces of candy together with a number of larger pieces or bars of candy, and another article of merchandise, and a device commonly called a "push card". The push card included with this assortment bore legends at the top thereof stating the manner in which the candy and the other article of merchandise in said assortment were to be distributed to the ultimate purchasers. These legends were as follows:

WEBSTER'S 1¢

Nos. 1-3-7-9-10-11-22-30-33-44-50-55-66-70-77-90-99-110-111-122-130-133-144-150 receive choice of any bar in assortment

Nos. 5-15-25-35-45-55-65-75-85-95-105-115-120-125-147 receive choice of any two suckers.

Last number purchased receives a Big Chief Tom-Tom.

All other numbers receive one sucker.

NOTE.—55 is twice lucky.

No Blanks—1 piece or more with every purchase.

The push card also had immediately below the legends quoted, 150 partially perforated discs, and under each disc was a number which number was effectively concealed from the purchasers and prospective purchasers until a push or selection had been made and the particular disc separated from the card. The candy contained in said assortment was distributed to the consuming public in accordance with the legends at the top of said push card. Sales were one cent each and the fact as to whether a purchaser received one of the suckers, two of the suckers, or one of the larger pieces or bars of candy, or the other article of merchandise for the price of one cent, was thus determined wholly by lot or chance.

The respondent distributed to its customers and prospective customers a circular advertising the above mentioned assortment, which showed the manner in which such assortment was to be distributed to the ultimate consumer.

PAR. 3. Another assortment manufactured and distributed by the respondent and involving the same principle or sales method, was designated by respondent as "Webster's Big Value." This assortment contained a number of small chocolate pellets together with a number of larger pieces or bars of candy and a box of chocolate Angel Food candy, together with a push card. The push card included with this assortment bore legends at the top stating the manner in which the several pieces of candy in said assortment were to be distributed to the ultimate purchasers. These legends were as follows:

1¢ WEBSTER'S BIG VALUE 1¢

Nos. 15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38- receive choice of any bar in assortment.

Nos. 100-101-102-103-104-105-106-107-108-109-110-111-112-113-114- receive two chocolate pellets.

Last purchase in each section receives box of chocolate Angel Food.

All other numbers receive one chocolate pellet.

No Blanks--1 piece or more with every purchase.

The push card also had immediately below the legends quoted, 150 partially perforated discs and under each disc was a number effectively concealed from the purchasers and prospective purchasers until a push or selection had been made and the disc separated from the board. The candy contained in said assortment was distributed to the consuming public in accordance with the legends at the top of said push card; sales were one cent each, and the fact as to whether a purchaser received one or two of the small pieces of chocolate candy, or received one of the larger pieces or bars of candy, or received the box of chocolate Angel Food candy, was thus determined wholly by lot or chance.

PAR. 4. Another assortment manufactured and distributed by respondent was composed of a number of bars of candy and a number of boxes of candy of varying sizes together with a device commonly called a push card. The push card included with this assortment bore legends at the top thereof stating the manner in which the bars of candy in said assortment and the several boxes of candy in said assortment were to be distributed to the ultimate purchasers. These legends were as follows:

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5¢

Bargain Sale

WEBSTER'S

Nos. 17-49 RECEIVE A BOX OF CHOCOLATES.

Nos. 10-20-30-40 RECEIVE A BOX OF FUDGE.

Nos. 35-45-55 RECEIVE CHOICE OF 2 Bars of CANDY.

ALL OTHER NUMBERS RECEIVE 1 BAR OF CANDY.

LAST PURCHASE RECEIVES LARGE BOX OF CHOCOLATES.

NOTICE.—This is not a Gambling device. Every punch receives a 5¢ bar. Extra bars for advertising.

The push card also had immediately below the legends quoted, 60 partially perforated discs and under each disc was a number effectively concealed from the purchasers and prospective purchasers until a push or selection had been made and the particular disc separated from the card. The candy contained in said assortment was distributed to the consuming public in accordance with the legends at the top of said push card. Sales were five cents each and the fact as to whether a purchaser received one or two bars of candy, or received a box of chocolates, or a box of fudge or a large box of chocolates, for the price of five cents, was thus determined wholly by lot or chance.

The respondent has manufactured and sold various assortments with which a push card was included, but all of these assortments, while they varied in detail, made use of the same principle or sales plan.

PAR. 5. The candy assortments involving the lot or chance feature, as described in paragraphs 2, 3, and 4, above, are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without the lot or chance feature, 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 distinguish these types of assortments.

PAR. 6. Numerous retail dealers purchase and have purchased the assortments described in paragraphs 2, 3, and 4 above, direct from respondent and from wholesale dealers and jobbers, who in turn have purchased said packages or assortments from the respondent. Such retail dealers display said packages for sale to the public as packed and assembled by the respondent and the candy contained in said packages or assortments is sold and distributed to the consuming public by means of the push card furnished by respondent and in accordance with the legends printed thereon.

PAR. 7. The respondent sells its merchandise to some retail dealers and to wholesale dealers and jobbers throughout the United States,

with the exception of the extreme Western Coast States, and respondent's merchandise, both "straight" and "draw" or "deal" assortments, is resold in practically all stores where candy is sold.

All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the wholesaler, jobber, or retail dealer. The packages are packed in such manner that they can be displayed and are designed to be displayed without alteration, addition or rearrangement, and offered for sale to the consuming public by means of said push cards.

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, 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 and furnishes the said push card so that the said candy may, without addition, alteration, or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 8. A substantial demand in the trade for "draw" or "deal" candy comes from the small retailers. The stores of these small retailers are, in many instances, located near schools and attract the trade of school children. A substantial proportion of the consumers or purchasers of lottery or prize package candy are children, and because of the lottery or gambling feature connected with the "draw" or "deal" assortments 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 packages are displayed side by side. The sale and distribution of "draw" or "deal" packages or assortments of candy, or candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner, by lottery or chance, teaches and encourages gambling, especially among children.

PAR. 9. There are in the United States many manufacturers of candy who do not manufacture and sell lottery and prize package assortments of candy and who sell their "straight" goods candy in interstate commerce in competition with the "draw" or "deal" candy. The manufacturers of "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 sale of "straight" goods candy is principally due to the lottery or gambling features indicated with the "draw" or "deal" candy.

PAR. 10. The sale and distribution of candy by retailers, by the methods described in paragraphs 2, 3, and 4 hereof, is the 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 that many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among children, as injurious to the candy industry as it results in the merchandising of a chance or lottery, instead of candy; and as providing retail merchants with a 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. The retailers, finding that they can dispose of more candy by the "draw" or "deal" 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. Such 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" candy show a marked decrease. The sale and distribution of candy by lot or chance provides an easy means of disposing of such products.

There is a constant 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 have begun the sale and distribution of candy 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 average annual volume of respondent's business amounts to approximately \$100,000, and while the "draw" or "deal" assortments do not constitute the major portion of this business yet sales of such assortments by respondent are substantial.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Barager-Webster Company, a corporation, 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 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, testimony and evidence taken before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint, 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 hereby ordered, That the respondent, Barager-Webster Company, a corporation, its officers, agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to wholesale dealers and jobbers for resale to retail dealers and to retail dealers direct, candy so packed and assembled that sales of said candy to the general public are to be made, or are designed to 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 or which are designed to be used without alteration or rearrangement of the contents of said 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 assortment to the public;

(3) Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy together with a device commonly called a "push card" for use or which is designed to be used in distributing or selling said candy to the public at retail;

(4) Furnishing to retail and wholesale dealers and jobbers a device commonly called a push card, either with packages or assortments

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of candy or candy products, or separately, bearing a legend or legends or statements informing the purchasing public 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.

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

Complaint

IN THE MATTER OF
CHARLES N. MILLER COMPANY

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

Docket 2826. Complaint, May 29, 1936—Decision, Aug. 4, 1936¹

Where a corporation engaged in manufacture and sale of candies, including assortments composed of number of individually wrapped penny pieces of uniform size and shape, together with number of large candy bars given as prizes to chance purchasers of penny pieces, color of which was found to differ from that of majority—

Sold said assortments to wholesalers and retailers by whom they were exposed for sale and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in hands of others means of conducting lotteries in sale of its products in violation of long-established public policy of common law and criminal statutes and of the established public policy of the United States Government;

With capacity and tendency to induce purchasers to buy its said product in preference to that offered and sold by competitors, many of whom were and are unwilling to adopt and use said method or any method involving a game, sale or scheme of chance or other method contrary to public policy, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and element of chance involved in sale thereof, and induced to purchase such candy, so packed, in preference to that of competitors who do not use same or equivalent methods, and with tendency and capacity, by reason thereof, to divert to it trade and custom from competitors who do not use same or equivalent methods, and to exclude from trade concerned all competitors unwilling to use and who did not use same or equivalent method as unlawful, lessen competition therein, and tend to create monopoly thereof in it and such other candy distributors as used such method, and to deprive purchasing public of benefit of free competition therein, and eliminate therefrom all actual competitors and exclude therefrom all potential competitors who did not adopt and use such method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Harold W. Knowlton, of Boston, Mass., for respondent.

COMPLAINT

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

¹ Order, however, published as of Nov. 14, 1936.

Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Charles N. Miller Co., 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 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, Charles N. Miller Co., is a corporation organized and operating under the laws of the State of Massachusetts, with its principal office and place of business located at 16 Medford Street, Boston, Mass. Respondent is now, and for one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Boston, Mass., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of candy is composed of a number of pieces of candy of uniform size and shape, together with a number of large bars of candy, which large bars 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 majority of the said pieces of candy of uniform size and shape in said assortment have the same color, but a small number of said pieces of candy have a different color; the said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies colored differently from the majority of said candies are entitled to receive, and are to be given free of charge, one of the said

large bars of candy heretofore referred to. The color of the said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy is unwrapped. The aforesaid purchasers of said candies, who procure a candy colored differently from the majority of said pieces of candy in said assortment, thus procure one of the said large bars of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a large bar of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts, and practices of respondent are all to the prejudice of the public and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 29, 1936, issued and served its complaint in this proceeding upon the respondent, Charles N. Miller Co., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

After the issuance of said complaint, the respondent filed answer thereto in which it stated that before the said complaint was brought it had ceased to sell the assortments of candy packed and assembled as set forth therein and was no longer selling the same, and prayed that the complaint be dismissed. Subsequent thereto, on June 23,

1936, the respondent filed a second answer to the complaint, in which it stated that it admitted all of the material allegations of the complaint to be true, except that it denied that at the time the bill of complaint was brought or since that time it was selling the assortments complained of. The said second answer further stated that respondent consented that the Commission, without hearing, without further evidence and without other intervening procedure, might make, enter, issue and serve upon it its findings as to the facts and conclusion based thereon, and an order to cease and desist from the methods of competition alleged in the complaint.

Thereafter this proceeding came regularly on for final hearing before the Commission on the said complaint and on the first and second answers of respondent, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles N. Miller Co., is a corporation organized and operating under the laws of the State of Massachusetts, with its principal office and place of business located at 16 Medford Street, Boston, Mass. Respondent is now, and for one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Boston, Mass., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of the said assortments of candy was composed of a number of pieces of candy of uniform size and shape, together with a number

of large bars of candy, which large bars of candy were to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape in said assortment had the same color, but a small number of said pieces of candy had a different color; the said pieces of candy of uniform size and shape retailed at the price of 1¢ each, but the purchasers who procured one of the said candies colored differently from the majority of said candies were entitled to receive, and were to be given free of charge, one of the said large bars of candy heretofore referred to. The color of the said pieces of candy of uniform size and shape was effectively concealed from purchasers and prospective purchasers until a selection had been made and the particular piece of candy was unwrapped. The aforesaid purchasers of said candies, who procured a candy colored differently from the majority of said pieces of candy in said assortment, thus procured one of the said large bars of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sold its assortments resold the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sold direct exposed said assortments for sale and sold said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, and said sales plan had the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, in the manner above alleged, involved a game of chance or the sale of a chance to procure a large bar of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, was a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and was contrary to an established public policy of the Government of the United States. The use by respondent of said method had a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof had the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who did not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who made and sold candy in competition with the respondent, as above alleged, were unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrained therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy were 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 were thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who did not use the same or equivalent methods. The use of said method by respondent had the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who did not use the same or equivalent method; to exclude from said candy trade all competitors who were unwilling to and who did not use the same or an equivalent method because the same was unlawful; 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 used 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 the respondent had the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who did not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent were and 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 or any other method that is contrary to public policy.

PAR. 7. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Charles N. Miller Co., a corporation, 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 constitute 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent admitting the material allegations of the complaint to be true, and waiving all further proceedings herein, 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, Charles N. Miller Co., its officers, agents, representatives and employees, in the offering for sale, 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 or may be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape 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.

It is further ordered, That the respondent, 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.

¹ Published as modified as of November 14, 1936. See Commission's opinion as of said date, and as published therewith, reasons for so modifying and for denying respondent's request to dismiss the complaint on the ground that it had discontinued the unfair method of competition.

Syllabus

IN THE MATTER OF
KENNETH HAUER, TRADING AS HAUER DISTILLING
COMPANY

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

Docket 2460. Complaint, June 27, 1935—Decision, Aug. 7, 1936

Where an individual engaged in purchasing and bottling whiskies, and in purchasing, rectifying, and selling gins and other spirituous beverages, and in making gin by redistillation of purchased alcohol over juniper berries and other aromatics, and neither owning, operating, nor controlling any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, and distilling no beverage, but purchasing his distilled spirituous requirements from distillers and bottling and reselling same, and in substantial competition, in course of his said business, with (1) individuals and concerns who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them, and who truthfully use words "Distillery," "Distilleries," "Distiller," or "Distilling" as part of their corporate names, and on their stationery and on labels of the bottles in which they sell and ship their products, and with (2) those engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, who do not use aforesaid words, as above set forth—

Represented, through use of his trade name, including word "Distilling," in his advertising matter and on his stationery, price lists, cartons, and on labels attached to bottles in which he sold and shipped his said products, preceded, on latter, in some cases, by words "Distilled by," "Manufactured by," or "Bottled by," as case might be, that he was a distiller of alcoholic beverages, as ordinarily accepted and understood in liquor industry from word "Distilling," i. e., maker of such beverages by original distillation from grain, fruit, or vegetable mash, and failed to negative false and misleading impression created thereby through statement on labels, in some cases, showing State in which liquor was distilled;

With effect of misleading and deceiving dealers and purchasing public, substantial portion of which prefers to buy spirituous liquors bottled by actual distillers and manufacturers thereof, into belief that said whiskies, etc., sold by him were by him made and distilled from mash, wort, or wash, and of inducing dealers and public, in such belief, to purchase said whiskies, etc., and of thereby diverting trade to him from competitors who did not, by their trade or corporate names, or in any other manner, represent that they were manufacturers, by distillation from mash, wort, or wash, of whiskies and other spirituous beverages, and with effect of securing advantage over concerns who did not pursue or practice such misrepresentation and falsely purport to be manufacturers, by reason of prestige attaching in wholesale trade to the distiller, and advantage thereof in overcoming sales resistance, and belief in minds of said trade and public that distiller, investment and expenses of which are, in general,

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greater than those of rectifier, controls the making of the product from start to finish, with all ingredients going therein within its own establishment, and with sales advantage therein embraced, and with capacity and tendency so to mislead and deceive, as above set forth; to the substantial injury of competition in interstate commerce:

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

Before *Mr. Charles F. Diggs* and *Mr. John W. Addison*, trial examiners.

Mr. PGad B. Morehouse 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 Kenneth Hauer, an individual trading as Hauer Distilling 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 the 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 is an individual trading under the name and style of Hauer Distilling Company and doing business under the laws of the State of Ohio, with his office and principal place of business in the city of Cincinnati, in said State. He is now, and for more than 1 year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of his business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash,

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and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia and in the course and conduct of his business as aforesaid, respondent is, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by section 3247 of the Revised Statutes regulating internal revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "Distilling" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, manufacturing of spirituous liquors by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of his business as aforesaid by the use of the word "Distilling" in his trade name, printed on his stationery, catalogs, advertising, and labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that he is a distiller and that the said whiskies, gins, and other spirituous liquors therein contained were by him manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous liquors by him so bottled, labeled, sold, and transported, and merely by the use of a still operated by him as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous liquors by him so bottled, labeled, sold, and transported in the sense

in which the word "distilling" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by him from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from his competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 27, 1935, issued, and on June 28, 1935, served its complaint in this proceeding upon respondent, Kenneth Hauer, an individual trading as Hauer Distilling Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission, theretofore duly designated by it and thereafter before John W. Addison, an examiner of the Commission duly substituted to take testimony in the place and stead of the said Charles F. Diggs; no testimony was offered in opposition to the allegations of the complaint; and the testimony and evidence in support of the complaint were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint; brief of respondent and all oral argument having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Kenneth Hauer, the respondent, is an individual who, for more than a year prior to June 1935, conducted the business of a rectifier and wholesaler of liquors, with his principal place of business at 420 Augusta Street, Cincinnati, Ohio. He purchased and bottled without rectification, whiskies and purchased, rectified and sold gins and other spirituous beverages up until June 1935 to wholesalers in the States of Kentucky, Texas, New Jersey, and Indiana, his sales for the year ending June 1935 being approximately \$56,000 in volume. The Commission finds that prior to June 1935 this respondent engaged in such business in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he caused the said products, when sold, to be transported from his place of business aforesaid into and through various States

of the United States to the purchasers thereof located in States of the United States other than the State of Ohio. In the course and conduct of his business as aforesaid, respondent until June 1935 was for more than a year, in substantial competition with other individuals, corporations, firms, and partnerships engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of his business as aforesaid, during the same period of time, respondent was in substantial competition with other individuals, corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages and types, or the mixing of other ingredients with whiskies, but reducing proof of whisky by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended (as the case may be) by the ----- Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ----- Company". If, in the distillery's rectifying plant, other spirits have been blended or rectified he puts "Blended and Bottled by ----- Company". Finally, blown (usually in the bottom) of

each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-243" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's permit.

It is not always possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier, who is a distiller or by a rectifier who is not a distiller.

PAR. 3. This respondent purchased his distilled spirits requirements from distillers, bottled and resold the same in interstate commerce. The only rectifying which he did was the production of gin from purchased alcohol by the process hereinafter set out. In the course and conduct of his business, respondent represented through the use of his trade name, "Hauer Distilling Company", in his advertising matter, on his stationery, price lists, cartons, and labels attached to the bottles in which he sold and shipped his said beverages, that he was a distiller of alcoholic beverages, in the sense in which "distiller" is ordinarily accepted and understood in the liquor industry. On labels for gins redistilled by him, the name was preceded by the words "Distilled by" or "Manufactured by" and on the labels for some of his whisky, the name was preceded by the words "Bottled by". Some of his labels for whisky contained nothing to indicate that the whisky was not distilled by him except "Permit Fed. R-243". Others of such labels named the State in which the whisky was distilled. The impression that respondent was a distiller, to be gained from reading these labels, was not negated by the fact that in some cases labels appeared on the bottles showing the State in which the liquor was distilled, as presumptively and actually real distillers may and do have distilleries located in more than one State and in States other than the sites of their rectifying plants.

Respondent was a rectifier and not a distiller in the sense ordinarily accepted and understood when such term is used in the liquor industry. He does not now and never did own, operate, or control any place where beverages are made by original distillation from grain, fruit, or vegetable mash, wort, or wash, and he does not now or never did distill any beverage. He had a still which he used in making gin by redistillation of purchased alcohol, not produced by him, over juniper berries and other aromatics, but this redistillation

did not make respondent a distiller as defined by United States Code, title 26, section 241, regulating internal revenue, nor as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been and still were actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "distillers" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of making beverages by original distillation from grain, fruit, or vegetable mash.

In general the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondent produced his gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels "Distilled by ----- Distillers". These are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondent, yet it is all done in a distillery and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumers with respect to such products.

Existing regulations and regulations proposed under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

PAR. 4. There were and still are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling," as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. A substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and this respondent's aforesaid misrepresentation had a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondent's products in preference to the products of truthful competitors.

The testimony clearly showed and the Commission finds that a prestige attaches in the minds of the wholesale trade to the distiller, and that that prestige is an advantage in overcoming sales resistance; that in the mind of the wholesale trade and the public, the belief that a distiller controls the making of such products from start to finish, with all the ingredients going into them within its own establishment, constitutes a sales advantage; and that such use as respondent made of the word "Distilling" in his trade name gave him an advantage over concerns who did not pursue or practice such misrepresentation and who did not purport to be manufacturers when they were not.

The Commission therefore finds that the representation of respondent through use of the word "Distilling" in his trade name as aforesaid was calculated to and had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent were manufactured and distilled by him from mash, wort, or wash and was calculated to and had the capacity and tendency to and did induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade

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to respondent from his competitors who did not by their trade or corporate names or in any other manner misrepresent that they were manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent did substantial injury to competition in interstate commerce.

PAR. 6. Because of existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), and which regulations are presently expected to become effective as of August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "distilled gin", and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued on June 27, 1935, and served on June 28, 1935, the answer of respondent, testimony and evidence taken before Charles F. Diggs and John W. Addison, examiners of the Commission theretofore duly designated by it in support of the charges of the complaint, no testimony having been offered by respondent in opposition thereto, 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 Kenneth Hauer, an individual, trading as Hauer Distilling Company, his agents, salesmen, and employees, in connection with the offering for sale or sale by him in interstate commerce of whiskies, gins, and other spirituous beverages, except gins produced by a process of rectification whereby alcohol purchased but not

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produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through use of the word "Distilling" in his trade name, on his stationery, advertising or on the labels attached to the bottles in which he sells and ships said products, or in any other way by word or words of like import, (a) that he is a distiller of whiskies, gins, or any other spirituous beverages; or (b) that the said whiskies, gins or other spirituous beverages were by him manufactured through the process of distillation; or (c) that he owns, operates, or controls a place or places where any such products are by him manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate or control such a place or places.

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

IN THE MATTER OF
VERNON WHITE & COMPANY ET AL.

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

Docket 2552. Complaint, Sept. 14, 1935—Decision, Aug. 7, 1936

Where three corporations, and an individual who directly or indirectly controlled and managed the same, engaged in sale and distribution of food products, including imitation jelly concentrate designated "YUM-YUM"—Represented in circulars distributed to customers and prospective customers that "Each package will make 5 glasses of pure fruit jelly", and that "YUM-YUM is the pure fruit jelly itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success", and, by printed statements on the cardboard containers thereof, that it "Contains genuine true fruit flavor, fruit acid derived from grapes, pectin, corn sugar and harmless vegetable color";

Facts being said preparation did not make food product known and identified as jelly, i. e., that semisolid, gelatinous product made by concentrating to a suitable consistence the strained juice or water extract from fresh fruit, cold pack fruit, canned fruit, or a mixture of two or all of them, with sugar or with sugar and dextrose, but made imitation jelly product containing fruit juice concentrate or extract, fruit acid derived from grapes, pectin, corn sugar, and vegetable color, and product was not made from the pure fruit itself;

With effect of misleading and deceiving purchasers into the false and erroneous belief that said representations were true and of thereby inducing them, in reliance upon such beliefs, to purchase said product, and with capacity and tendency so to do, and thereby tend to divert, and with effect of diverting, trade to them from competitors who do not in any manner misrepresent the kind, nature, ingredients, or quality of their products, to the substantial injury of such competitors, and competition in commerce:

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. Jay L. Jackson for the Commission.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that Vernon White & Company, a corporation, Thayer Sales Corporation, a corporation, Federal Pure Food Company, a corporation, and T. E. Hanshaw, hereinafter referred to as 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:

PARAGRAPH 1. Respondent, Vernon White & Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street in the city of Chicago, in the State of Illinois. All or approximately all of the controlling and voting capital shares of stock of said respondent company are owned, held, or controlled by one T. E. Hanshaw, respondent named herein, or by Federal Pure Food Company, respondent named herein, or by Thayer Sales Corporation, respondent named herein, or jointly by said respondents, and said respondent, Vernon White & Company, and the assets, business, and affairs of said respondent company for more than one year last past have been and now are held by and under the control, direction, and management of one or more of the other named respondents herein. Upon information and belief it is further alleged that said Vernon White & Company was on November 15, 1934, cited to the attorney general for the State of Illinois for dissolution for failure to file an annual report and pay franchise taxes for the year 1934, but that to date hereof no official decree dissolving said respondent company has been rendered.

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 located at 2944 West Lake Street in the city of Chicago, in the State of Illinois.

Respondent, Federal Pure Food Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. Said respondent company is a subsidiary or branch of Thayer Sales Corporation, respondent named herein, and as such, since the date of its incorporation on July 5, 1935, has claimed and now claims to be the successor to said Vernon White & Company and to have, own and control the business and assets of said Vernon White & Company, together with the business and assets formerly owned by Federal Pure Food Company, bankrupt, and sold by receiver under date of March 6, 1934, to T. E. Hanshaw, upon order of referee in bankruptcy, dated March 5, 1934, Cases Nos. 51,342 and 54,934, in the District Court of the United States for the Northern District of Illinois, Eastern Division.

The aforesaid respondents are individually and jointly engaged in the manufacture and production of food products, particularly a

product designated as "Yum-Yum", and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped from their place or places of business in Chicago, Ill., to purchasers thereof located in a State or States of the United States other than the State of Illinois, in the course and conduct of which said respondents have been, since the dates of their respective incorporations, and are now, in competition with other corporations, individuals, firms, and partnerships engaged in like commerce.

Respondent, T. E. Hanshaw, is an individual and an officer of Thayer Sales Corporation and of Federal Pure Food Company, respondents named herein, with his principal place of business located at 2944 West Lake Street in the city of Chicago, in the State of Illinois. At all times material to this complaint said respondent has been and is now engaged in and with the aforesaid business of respondents herein, and with the advertising, promotion, and management thereof, and upon information and belief it is alleged that said respondent, T. E. Hanshaw, is the sole owner of, and in exclusive control of, the corporation-respondents herein, and that at all times material to this complaint, said respondent has been the sole owner, and in exclusive control, either directly or indirectly, of the corporation-respondents named herein.

PAR. 2. Respondents have sold and now sell said products of said Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, interstate carriers and other channels of interstate commerce, and by means of circulars, letters, labels, and other forms of advertising literature which have and have had a circulation in and through the various States of the United States and which have been and are circulated and distributed by respondents to customers and prospective customers in and throughout various States of the United States, in the course and conduct of which respondents, individually and jointly have made and now make false and misleading statements and representations, all to the injury of the public and to the injury of competitors of said respondents.

PAR. 3. In the course and conduct of the business of said respondents, as aforesaid, respondents caused a circular or printed letter to be circulated and distributed in interstate commerce, in which said respondents referred to and represented its "Yum-Yum" product and with reference thereto made the following statements and representations, among others, to wit:

We do not know whether you have ever tried our YUM-YUM and for this reason are sending you a sample package, under separate cover. Won't you

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take it home and have some one make up a batch of jelly for you. Each package makes five glasses of pure fruit jelly in 5 minutes, *nothing to add but sugar and water.*

Just follow the directions on the package. You will be surprised at the delicious flavor of this jelly, and we know you will agree that it is equal in every way to the finest home-made jelly. YUM-YUM is the pure fruit itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success. Finished jelly made from YUM-YUM only costs the housewife from 5¢ to 6¢ per glass, depending upon what she pays for sugar.

Said respondents have caused and now causes the package, or container, containing the said "Yum-Yum" product to be circulated and distributed in interstate commerce and to purchasers of said product, upon which package or container has been and now is printed the following statement, among others, to wit:

Contains genuine true fruit flavor, fruit acid, derived from grapes, pectin, corn sugar and harmless vegetable color.

PAR. 4. In the course and conduct of the business of said respondents, as aforesaid, and in the advertising, promotion, selling and distribution of said "Yum-Yum" product, as aforesaid, respondents have falsely and misleadingly stated and represented, and falsely and misleadingly state and represent that the said "Yum-Yum" product would make "five glasses of pure fruit jelly", and that said product contains "genuine true fruit flavor", when in truth and in fact said product was not and is not made of pure fruit, would not and will not make pure fruit jelly, and was not and is not flavored with true fruit flavors or the juices of pure fruits, but was and is manufactured from and flavored with an ingredient or ingredients other than pure fruit or the juices thereof.

PAR. 5. The aforesaid false and misleading statements and representations so made by respondents in the sale and distribution of the said "Yum-Yum" product have had and have the tendency and capacity to mislead and deceive and do mislead and deceive purchasers and prospective purchasers of like products of competitors of said respondents and the purchasing public into the false and erroneous belief that said statements and representations are true, thereby causing said customers and prospective customers of competitors of said respondents to purchase the said product "Yum-Yum" in lieu and instead of the products of respondents' competitors, in consequence of which trade has been and is diverted to respondents from their competitors who do not misrepresent their products, thereby substantially injuring competition and competitors of respondents in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 719), entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on September 14, 1935, issued, and on September 16, 1935, served, its complaint in this proceeding upon the respondents Vernon White & Company, a corporation, Thayer Sales Corporation, Federal Pure Food Company, a corporation, and T. E. Hanshaw, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by respondents represented by respondent T. E. Hanshaw; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief of counsel for the Commission, and respondents having waived oral argument and brief in their behalf, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Vernon White & Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, but as such has ceased business and is now moribund. Since the 6th day of March 1934, the assets and business of said corporation have been owned, held, and controlled by respondents T. E. Hanshaw and Federal Pure Food Company, and respondents Federal Pure Food Company and Thayer Sales Corporation have assumed,

and do assume, responsibility for any and all business affairs conducted under or in the name of respondent Vernon White & Company since the date of March 6, 1934.

Respondent Federal Pure Food Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. It is a subsidiary branch of respondent Thayer Sales Corporation, and since the 6th day of March 1934, has been, and is now, a successor in interest to the assets and business of respondent Vernon White & Company.

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 located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois.

Respondent T. E. Hanshaw is an individual and an officer of respondents Thayer Sales Corporation and Federal Pure Food Company, with his principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. During all times material to the complaint, said respondent has been in direction and control of the business policies, advertising, and sales promotion of the business of corporate respondents named in this proceeding.

PAR. 2. On the 17th day of September 1934, immediately prior thereto, and since said date, the aforesaid corporate respondents were and have been individually and jointly engaged in the sale and distribution of food products, more particularly that product designated as "YUM-YUM" and sold by, through, and under the name of corporate respondents Federal Pure Food Company and Vernon White & Company, in commerce among and between various States of the United States, causing said product, when sold, to be shipped from their place of business in the city of Chicago, State of Illinois, to purchasers thereof located in States of the United States other than the State of Illinois.

PAR. 3. In the course and conduct of the aforesaid business, the said corporate respondents at all times material to the complaint have been, and now are, in competition with other corporations, individuals, firms, and partnerships engaged in like commerce.

PAR. 4. Under date of September 17, 1934, in the course of the aforesaid business and in connection with the offering for sale, selling, and distributing of said "YUM-YUM" product, respondents caused to be printed, circulated, and distributed, to customers and prospective customers, a piece of sales literature, in which said product was

referred to and in which it was represented, among other things, that "Each package will make 5 glasses of pure fruit jelly" and that "YUM-YUM is the pure fruit itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success." By printed statement upon the face of cardboard containers in which said product is packaged or enclosed, respondents also caused and cause to be represented that said "YUM-YUM" product "Contains genuine true fruit flavor, fruit acid derived from grapes, pectin, corn sugar and harmless vegetable color."

PAR. 5. The food product known as "jelly" and identified by the word "jelly" is that semisolid, gelatinous product made by concentrating to a suitable consistence the strained juice or strained water extract from fresh fruit, from cold-pack fruit, from canned fruit, or from a mixture of two or of all of these, with sugar or with sugar and dextrose. In truth and in fact, the said "YUM-YUM" does not make such a product, but the same is made with, and makes an imitation jelly product containing, fruit juice concentrate or extract, fruit acid derived from grapes, pectin, corn sugar, and vegetable color. Contrary to the aforesaid representations caused to be made by respondents, to the effect that "YUM-YUM" makes jelly and is, or is made from, the pure fruit itself, said product does not make jelly and the same is not, and is not made from, the pure fruit itself.

PAR. 6. The aforesaid representations made in the sales literature hereinabove referred to as circulated and distributed under date of September 17, 1934, to the effect that the said "YUM-YUM" product makes jelly, and that it is, or is made from, the pure fruit itself, are, and each of them is, false and misleading, and the same have, and each of them has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said representations are true, thereby inducing them, in reliance upon such beliefs, to purchase the said "YUM-YUM" product and thereby tending to divert and diverting trade to the said corporate respondents from their competitors who do not in any manner misrepresent the kind, nature, ingredients, or quality of their products, all thereby to the substantial injury of said competitors and competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of

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Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and upon testimony and evidence taken before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and upon brief filed by counsel for the Commission, respondents having filed no brief and having waived oral argument upon final hearing, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondents Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, and respondent T. E. Hanshaw, and their and his officers, agents, representatives, and employees, in connection with the advertising, offering for sale, sale or distribution, in interstate commerce, of the food product sold under the name of, and known as, "YUM-YUM", do cease and desist from:

(1) Representing in any way, directly or indirectly, that "YUM-YUM" makes jelly;

(2) Representing in any way, directly or indirectly, that "YUM-YUM" as now made, offered for sale, and sold, is, or is made from, the pure fruit.

It is further ordered, That respondents Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, and respondent T. E. Hanshaw, within 60 days from and after the date of service upon them of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which said order to cease and desist hereinabove set forth is being complied with.

IN THE MATTER OF
STERLING COMPANY ET AL.

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

Docket 2629. Complaint, Nov. 15, 1935—Decision, Aug. 12, 1936

Where a corporation engaged in the sale of cosmetics and its "Bonnie Day" toiletries through so-called prize club, and an individual engaged as president thereof, and two others who organized and controlled the same and were responsible for the selling scheme carried out through the medium of said so-called club—

Sold its products through an ostensible plan of introducing the same, under which it falsely advertised in newspapers and periodicals, leaflets, by radio broadcasts, and otherwise, that those sending in solution to some simple problem depicted, such as naming well-known motion picture actresses or stars, faces or likenesses of which were more or less concealed in the general depiction, or whose first or last names began with any letter in sentence, "Win Twenty Five Thousand Dollars" (with two of such names actually supplied), would receive an automobile or large sum in cash, or both, and that others had won substantial prizes and that large number of prizes would be awarded "to advertise and extend our business", through such statements (with heads and faces), as "I won \$485", "I won \$1980", etc., "Would you too like to win a brand-new, latest model Buick sedan * * * and \$1,000 extra for promptness?", "Now comes your chance to go after big prizes", "Can you find five movie stars' faces in picture", "A sensational advertising campaign. Do you want \$2500? We want people acquainted with our company quick. We will award 100 grand prizes to advertise and extend our business", "Don't send a cent, just do this now", etc.;

Facts being replying prospect supplying solution and sending \$2, pursuant to demand made in glowing follow-up, "come-on" trade literature—which re-emphasized prizes to be won for promptness and otherwise, congratulated prospect for his alertness, and informed him that he had been given high credit rating and 4500 "booster points" (of no particular significance under the actual terms of the contest)—finally learned that he did not win a prize through such solution, but merely opportunity to compete for prizes in contests based on sale of said products, purchase of which had been thus induced by him, and that no prize or prizes had ever thus been awarded, or to those whose heads and faces were thus depicted, by said corporation;

With result that it was enabled, through predominance of said prize feature, to establish contact with prospective purchasers and to present an insidious but delusive appearance, and with capacity and tendency to mislead and deceive public into belief that said representations were true, or that one or more of them had been and was true, and into purchase of its said products in reliance on such erroneous beliefs, and to divert trade to it from competitors selling toilet articles and cosmetics, truthfully advertised and described:

Complaint

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. James M. Brinson for the Commission.

Nash & Donnelly, of Washington, D. C., 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 the Sterling Corporation, Don Parmelee, Paul H. Williams, and Sibley F. Everett, 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 thereto would be in the public interest, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondent, Sterling Company, is now and for more than a year last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business at Des Moines in said State. It has been for more than a year last past and now is engaged in the sale of cosmetics and toilet articles in commerce among and between the State of Iowa and the various other States of the United States and the District of Columbia. It causes its products, when sold, to be transported from its said place of business into and through the various other States of the United States to purchasers thereof at their various points of location.

Respondents, Don Parmelee, Paul H. Williams, and Sibley F. Everett, caused the respondent corporation to be formed in order to serve them as a corporate agency or instrumentality through which to operate and conduct the class of business hereinafter described. They own or control all of its corporate stock and respondent Don Parmelee is its president.

Respondent Sibley F. Everett is associated with the other individual respondents, Don Parmelee and Paul H. Williams in conducting the business of respondent corporation and in conjunction with each other said respondents have formulated its policies, originated or contrived its methods and plans. They supervise, direct, and control the activities of respondent Sterling Company, and completely dominate its business and all of its affairs.

In the course and conduct of such business respondents have been and now are in competition in interstate commerce with other individuals, partnerships, and corporations offering for sale and selling in interstate commerce toilet articles, cosmetics, and similar articles or commodities.

PAR. 2. It has been and is the practice of respondent Sterling Company, at the instance, and under the supervision and control of the aforesaid individual respondents, to offer for sale and sell its aforesaid products by means of a scheme or contrivance, the predominating features of which are prize puzzles, or prize contests of various kinds. Respondent Sterling Company through said individual respondents has developed the method of conducting its prize puzzle or prize contests through the medium of a so-called Sterling Prize Club, of which respondent Don Parmelee is manager, and said respondent corporation has offered for sale and sells its products through the agency of such prize club. It has presented its scheme and its prize puzzles and its prize contests to the purchasing public through advertisements of various kinds in magazines, newspapers, trade journals, house organs, and, more particularly, in leaflets, prospectuses, sheets of paper appearing in the form of and resembling newspapers, circular and other letters and by radio broadcasting. Such advertisements have contained false, deceptive, and misleading representations and statements to the effect that respondent Sterling Company has been and is engaged in a sensational advertising campaign and has adopted the scheme or plan of conducting the aforesaid contests as more successful or effective than the usual forms of advertisement; that solution of the problems or puzzles in the advertisements of respondent qualifies or entitles those solving the puzzles to receive prizes in the form of a Buick automobile or large or other sums of cash; that respondent does not require the sending of money; that a cash reward is guaranteed to those taking an active part; that it is necessary for a contestant to return the so-called "Promptness Certificate" furnished by respondent quickly in order to qualify for a so-called "Promptness" prize; that hundreds have already won cash prizes; that anybody can win; that contestants are in the running because certain points in connection with determination of prize winners have been given them by respondent; that the regular price of respondent's "Surprise Assortment", which it sends to those who forward the so-called "Promptness Certificate" has been or is \$3.45 and that the \$2.00 which must be forwarded to respondent with the Promptness Certificate is a bargain or special price for such assortment; that the persons pictured in its advertisements

have won contests and received prizes from respondent as a result of their success.

In truth and in fact the campaign which respondent has been and is conducting is a selling and not an advertising campaign, a fact which is withheld altogether by respondent from purchasers and prospective purchasers in its advertisements and such advertisements are either wholly false, grossly exaggerated, or withhold and conceal material facts which should be disclosed, such as the fact above stated, that respondent is engaging in a selling and not an advertising campaign, and the fact that solution of the puzzles or problems presented prospective purchasers in its advertising matter does not qualify or entitle the one who solves the puzzle or problem to any prize. Respondent, in its advertisements, or until it receives the \$2.00, fails to notify the reader thereof that he or she will not receive the Buick machine and \$1000.00 or \$2500.00 in cash for solution of any of the advertised puzzles; or that contestants for such prizes, must sell merchandise in order to win them. None of the pictured persons named as prize winners in the advertisements of respondent has ever won or received a prize from respondent. Two dollars must be sent along with the so-called "Promptness Certificate" and instead of receiving a prize, respondent furnishes an assortment of toilet articles and the purchaser thereupon becomes not a prize winner but a contestant if he so desires for the Buick automobile and \$1000.00, or the \$2500.00 in cash, to be determined by the amount of merchandise he or she sells for respondent. The assortment of merchandise which respondent sends those who transmit to it the so-called "Promptness Certificate", accompanied by \$2.00, never did sell for regular price of \$3.45, and the so-called bargain price of \$2.00 is now and has been the only and regular price for which respondent has sold the toilet articles or cosmetics composing such assortment.

Everyone answering the advertisements of respondent by transmission of the so-called "Promptness Certificate", together with \$2.00 in cash, returns and furnishes a substantial profit to respondent.

PAR. 3. There are and for many years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce cosmetics and toilet articles truthfully described in respect to quality, terms, and conditions of sale.

PAR. 4. The aforesaid false, deceptive and misleading representations of respondent described in paragraph 2 hereof have had and each of them has had and now have and each of them has the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and into the purchase of respondent's products in reliance on such erroneous belief.

Such practices of respondent have had and now have the capacity and tendency to divert trade to it from competitors who have been and now are selling toilet articles and cosmetics in interstate commerce by fair and truthful representations and methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 15th day of November 1935, issued and served its complaint in this proceeding upon respondents Sterling Company, a corporation, and Don Parmelee, individually and as its president, and Paul H. Williams and Sibley F. Everett, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held for taking testimony and receiving evidence, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it for such purpose.

The Commission was represented by James M. Brinson as its attorney, and the respondents appeared by John A. Nash, Esq., as their attorney. The aforesaid attorneys stipulated certain facts subject to approval of the Federal Trade Commission which are embraced by paragraphs 1, 2, 3, 4, and 5 of the findings as to the facts hereinafter set forth, and such stipulation is hereby approved. Testimony and evidence also were submitted in support of the complaint by the attorney for the Commission. None was submitted on behalf of respondents. The aforesaid stipulation, testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding having regularly come on for final hearing before the Commission on the complaint, the answer thereto, the stipulation, testimony and evidence, briefs in support of the complaint and in defense thereto, oral arguments of counsel having been waived and it having been agreed that the proceeding should be submitted to the Commission upon the record, the report of the examiner and the briefs of counsel, and the Commission having duly considered the

same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. There was during one or more of the several years last past a company known as Century Company, with its principal office and place of business at Des Moines, in the State of Iowa. It engaged in the sale in interstate commerce of cosmetics and toilet articles of various kinds, particularly so-called Bonnie Day toiletries, through the medium of a so-called "Century Prize Club" and by means of advertisements the same as, or similar to, those hereinafter described as employed by respondent Sterling Company.

Respondents Sibley F. Everett and Paul H. Williams were connected with and controlled the Century Company. It was subjected to a proceeding before the Special Board of Investigation of the Federal Trade Commission, and the respondent Paul H. Williams appeared before said Board as counsel for it. Shortly thereafter a complaint was issued by the Commission against the Century Company and duly served upon it. It surrendered its corporate charter and discontinued business.

After such dissolution, its property and assets were acquired by respondent Sibley F. Everett, and the same business was carried on as a partnership by him and his wife.

Some time later such respondent Sibley F. Everett and respondent Paul H. Williams decided in conjunction with each other to continue the business through another corporation to be formed under the name of Sterling Company. They caused this corporation to be organized in October 1934, under the laws of the State of Iowa. Under such laws, a corporation may have only one officer and respondent Don Parmelee became such officer, the president. Since its said organization it has been and is a corporation existing and doing business under and by virtue of the laws of said State with its principal office and place of business in Des Moines, in said State. Following the course pursued by its predecessor, the Century Company, it has been for more than a year last past and now is engaged in the sale of cosmetics and toilet articles, particularly so-called Bonnie Day toiletries, in commerce among and between the State of Iowa and the various other States of the United States.

Respondent Sterling Company causes its products when sold to be transported from its said place of business into and through the various other States of the United States to purchasers thereof at their various points of location.

In the course and conduct of such business respondent has been and now is in competition in interstate commerce with other individuals, partnerships, and corporations offering for sale and selling in like commerce toilet articles and cosmetics.

PAR. 2. Having caused respondent corporation to be formed in order to serve them as a corporate agency or instrumentality through which to operate and conduct the class of business hereinafter described, respondents Paul H. Williams and Sibley F. Everett acquired and owned and now own and control all of the corporate stock of the respondent Sterling Company. Said individual respondents, acting in conjunction with each other, have formulated, supervised, directed, and controlled the policies, the methods and practices of respondent Sterling Company, including its advertisements and the activities of the Sterling Prize Club, and have completely dominated its business. They are now supervising, controlling, managing, and dominating all of its affairs.

PAR. 3. It has been, and is, the practice of respondent, the Sterling Company, at the instance and under the supervision, direction and control of the aforesaid individual respondents, Everett and Williams, to offer for sale and sell its aforesaid products by means of a plan or contrivance called the Sterling Prize Club such as was utilized by the aforesaid Century Company under the direction of respondents Paul H. Williams and Sibley F. Everett, which had its Century Prize Club, just as respondent corporation under the direction of the same persons, respondents Paul H. Williams and Sibley F. Everett, now has its Sterling Prize Club, the predominating features of which are alleged prize puzzles or prize contests of various kinds. Respondent Don Parmelee was manager of said Sterling Prize Club until about August 10, 1935. He is no longer connected with respondent Sterling Company, but was, however, connected with it at time of its organization, as president, and immediately thereupon was employed by respondent, Sterling Company, as a manager of the aforesaid Sterling Prize Club.

PAR. 4. Respondent, Sterling Company, actually has sold its products under the guise of an ostensible plan of advertising through its said Sterling Prize Company for the purpose of introducing its products. Its so-called plan of advertising and introducing its products has been, and is in fact, the usual and regular method by which respondent corporation sells its products, and such plan is not a distinctive advertising plan: It is a selling plan. The amount of sales respondent makes has been and is entirely dependent upon the extent to which and the effectiveness with which its sales efforts have been so disguised as advertising and introducing efforts, and the purchasing public attracted by the apparent ease with which large prizes

can be won. This prize feature of its plan so predominates that it enables respondent to establish contact with prospective purchasers and to present an insidious but delusive appearance.

There are in the advertisements of respondent two outstanding features. One of them consists of numerous references to grand prizes and many other prizes to be awarded by respondent. The other consists of a direction to the reader of the advertisements to identify, name and transmit to respondent faces of moving picture actresses appearing dimly or vaguely in or about a pictorial representation of a Buick automobile, which is announced by respondent as one of the prizes to be awarded, or to solve some other simple problem or puzzle.

There is in the advertisements by means of which respondent initiates contact with purchasers or prospective purchasers no statement or explanation of the rules or regulations of the contest in which prizes will be distributed. There is nothing in them to indicate that a prize winner is to do anything except to identify and forward to respondent names of actresses whose faces obscurely appear in the above said pictorial representation of an automobile, or solve as stated some such simple problem or puzzle.

Respondent, Sterling Company, in presenting its said products for sale in the disguise of an advertising plan has employed advertisements of various kinds in magazines, newspapers or journals, house organs, and more particularly in leaflets, prospectuses, sheets of paper sometimes appearing in the form of and resembling newspapers, and by radio broadcasting. The following quotations or extracts from such advertisements of respondent corporations are typical of those representations and means by which it reaches and holds the attention and interest of prospective purchasers.

One leaflet contained the heads and faces of various individuals, near each of which appear such legends as "I won \$485", "I won \$1980", "I won \$1750", "I won \$6530", "I won \$1140", "I won \$405", and "I won \$5400".

These heads and faces appear in and about the pictorial representation of an automobile which is represented as a prize. There follows the statement, to-wit, "Now hundreds more cash prizes to be awarded. Would you, too, like to win \$2,500 or Buick and \$1,000 cash".

Beneath this appears the following: "A sensational advertising campaign. Do you want \$2,500.00? We want people acquainted with our company quick. We will award 100 Grand Prizes to advertise and extend our business. There will be thousands of dollars more in cash profit rewards. Would you, too, like to win a brand-new latest model Buick 8 Sedan delivered by the nearest dealer and \$1,000 extra for promptness?"

"Maybe this grand opportunity sounds like a dream, Hundreds have already won big cash prizes in similar friendship campaigns conducted by men now in this company. Now comes your chance to go after big prizes."

There then follow in large conspicuous letters, "CAN YOU FIND 5 MOVIE STAR FACES IN PICTURE?"

Below this appears the following: "I will award \$1,000 extra to the first prize winner just for being prompt in following my sensational plan. Therefore first prize winner gets Buick Sedan and \$1,000.00 if prompt, or \$2,500 all cash if preferred. Mail coupon today for details."

One of the advertisements of respondent appearing in the magazine section of a paper known as "The Sunday Mirror" of November 11, 1934, contained in large display letters, "HUNDREDS HAVE WON BIG CASH PRIZES. WOULD YOU, TOO, LIKE TO WIN \$2,500 OR A BUICK AND \$1,000?" Further references in such advertisements are made to these prizes and thereupon appear in large black letters "CAN YOU NAME 5 MOVIE STARS". After this appears the following, "Don't send a cent, just do this now. CAN YOU NAME 5 MOVIE STARS WHOSE FIRST OR LAST NAMES BEGIN WITH ANY LETTER IN THE FOLLOWING SENTENCE: WIN TWENTY-FIVE HUNDRED DOLLARS. Will Rogers is one; Norma Shearer is another. Write names on coupon below or on penny post card and mail quick and learn how you may also share in these thousands of dollars. No prizes less than \$5.00 cash. Someone wins \$2,500. Why not you?"

Again in this advertisement in large red letters appears the words "Not a cent of your own money needed on our movie star plan". Thereupon appear heads and faces of various individuals with their names and with the statement that they have won various sums of money. There is also in such advertisement the representation of an automobile with the heading, "CAN YOU FIND 5 MOVIE STAR FACES IN PICTURE?"

The quotations from the advertisements of respondent Sterling Company to which attention has been given, and the pictorial representations of automobiles mentioned as prizes, have signified and implied or have been obviously susceptible to the construction that the automobile and other substantial prizes would be awarded to the successful contestants in the detection or identification of the movie actresses whose faces were made to appear dimly or obscurely in or about the automobile, or to those who name five movie stars whose first or last names begin with any letter in the sentence "Win Twenty-five Hundred Dollars". No statement or explanation to the contrary, or any word or words tending to negative the necessary

implication from the quotations hereinabove set forth appear in connection with or in the vicinity thereof, nor does any such statement, explanation or language appear anywhere in the advertisements of respondent sufficiently clear to overcome the impression first necessarily produced by the advertisements of respondent as illustrated by such quotations which are first addressed to the attention of the prospective purchasers.

After the prospective purchaser has been attracted by advertisements of respondent corporation and his interest has been enlisted in the contest, principally by respondent's glowing description of the prizes to be awarded, and its repeated reference to the facility and ease with which prizes are to be won, he is supplied by respondent with additional literature if he forwards an inquiry in response to such advertisements. This additional literature also displays in vivid language the opportunities for a fortune respondent offers prospective purchasers.

Along with the literature supplied the prospective purchaser, when his inquiry is received, is a paper entitled "Promptness Certificate". The certificate contains the picture of an automobile at the side of which appear the words "Buick Sedan and \$1,000, or \$2,500 all cash". The purchaser is requested to mark "X" before the prize he wishes to win. He is further requested to address the communication to the manager of the respondent Sterling Company requesting that without the risk of a cent by him respondent should rush quick its generous money-back guarantee offer and the big movie star face assortment listed in the certificate. Although the purchaser is advised that he will not risk one cent there appears in red letters the following language, "\$2.00 bargaining prize", and again there appear the words "Don't forget, send only \$2.00". The latter is placed on the left of a list of toilet articles. The prospective purchaser also receives a letter from the manager of the Sterling Prize Club which reads in part as follows: "The fortune of \$2,500 is waiting right now. Will you grab it? I am giving you this glorious offer to receive \$2,500 cash prize, enough money to end worries, to bring happiness and prosperity. Well, as winner you can have a Buick 8 Sedan delivered by your nearest Buick dealer and \$1,000 cash, too * * * and here is the most remarkable part of it—not one penny of your money is needed now or ever on my plan. Here is all you need to do to receive this opportunity to win your choice of \$2,500, all cash, or a Buick Sedan delivered by your nearest dealer and \$1,000 in cash. LOOK AT THE LOWER PICTURE ON THE CARD. CAN YOU FIND 5 HEADS OR FACES? Faces are around the car and among the clouds. Some are sidewise, some up-side-down. Can

you find 5 or more? Look sharp, mark faces you find and mail card to me quick. Be early, be prompt." Beneath this appears "The first prize winner will receive \$2,500 all cash or a Buick and \$1,000 cash if preferred. Not only one person but hundreds will win cash prizes. Someone will win, why not you. No prize less than \$5.00. In case of ties, duplicate prizes will be paid."

In the literature sent the prospective purchaser after receipt of inquiry is also a letter which in part reads as follows: "Bully for you. You have received the highest credit given for answering. Now you are all set toward winning a fortune. Thousands in cash may be yours. I am even giving \$1,750 extra for promptness instead of \$1,500 as advertised. Then win first prize and \$1,750 cash is actually yours, or a LaSalle Sedan and \$3,700 cash * * * all congratulate you on your alertness in answering. That's the stuff winners are made out of."

The prospective purchaser also receives from respondent along with the above literature containing the above quotations a paper called "Certificate of award". Upon reading it the prospective purchaser is advised that he has been awarded 45,000 "booster" points toward the first grand prize, and he is advised that all he needs to do is mail back the promptness certificate as requested not later than the date stamped on certificate to qualify for the \$1,000 extra cash to be awarded first prize. Then follows the language, "Be prompt, win \$1,000 in addition to Buick Sedan as per plan." The circular also bears the following: "This certificate will be redeemed for \$2,500 cash or a Buick Sedan and \$1,000 cash if preferred. Hurry back your promptness certificate. Delay might cost you \$1,000." On the back of this certificate of award in small letters appear the price list and the plan under which the Sterling Prize Club conducts the distribution of prizes. When the purchaser reads this plan, if he ever notices it in the midst of the abundance of literature containing references to the prizes and to moving picture faces and other puzzles or problems to be solved, he discovers that the 45,000 booster points amount to nothing unless he receives 350,000 booster points, and these can be obtained only by the purchase or sale of a large amount of the toilet articles offered for sale and sold by respondent by means of its so-called advertising plan.

In truth and in fact, no such or any prize or prizes have been or were at any time awarded by respondents to those transmitting a solution of the puzzles or names of the actresses whose faces were made to appear in such advertisements, in or about the pictorial representation of the automobile, or names of five movie stars whose first or last names begin with any letter in the following sentence,

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"Win Twenty-five hundred dollars". The purpose and intent of such advertisements was to induce the belief among readers thereof that by transmitting to respondent, Sterling Company, a solution of the puzzles or the names of the actresses identified, and so-called promptness certificate furnished by respondent corporation, together with \$2.00 in money, they would not only be given a certain assortment of Bonnie Day toiletries, but would participate in the distribution of the prizes. Instead of being contestants for the prizes when they forwarded promptness certificate and \$2.00 together with their solutions of puzzles and problems described in the advertisements, such readers of respondent Sterling Company's advertisements learned that they were merely purchasers of respondent's products, and thereupon could become, if they chose, salesmen of respondent's products and enter the contest for the prizes—the same prizes which they had been led to believe by the respondent's advertisements they had an opportunity to acquire by means of the solution of problems presented in said advertising matter such as identification of various movie actresses appearing as aforesaid in and about the pictorial representation of the Buick automobile, or naming five movie stars whose first or last names begin with any letter in "Win Twenty-five Hundred Dollars".

In other words, they learned that instead of being contestants, they had simply qualified to become contestants.

The pictorial representations of the heads or faces or heads and faces of various persons in the advertising matter of respondent as those of persons who had been awarded prizes by respondents were false pretences in that no prize or prizes had ever or have ever been awarded to such persons or any of them by respondent Sterling Company.

PAR. 5. There are now and have been for many years last past, individuals, partnerships, and corporations offering for sale and selling in competition with respondent in interstate commerce toilet articles and cosmetics truthfully advertised and described.

PAR. 6. The above and foregoing representations, express and implied, of the respondent's advertisements, have had and each of them has had, the capacity and tendency to mislead and deceive the public into the belief that such representations have been and are true, or that one or more of them has been and is or have been and are true, and into the purchase of respondent's products in reliance on such erroneous beliefs or one or more of them.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert trade to respondent Sterling Company from competitors described in paragraph 5 hereof.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, stipulation concerning certain facts, testimony and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, oral argument having been waived by James M. Brinson, counsel for the Commission, and John A. Nash, counsel for respondents, and the Commission having made its report stating its findings as to the facts and its conclusion that respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondents, Sterling Company, a corporation, and Don Parmelee, Paul H. Williams and Sibley F. Everett, individuals, and each of them, whether acting individually, as corporate officers, or through or by means of any agency, or instrumentality, corporate or otherwise, or in any other manner whatsoever, in connection with the offering for sale or sale in interstate commerce of toiletries or other products, do forthwith cease and desist from:

(1) representing, directly or indirectly, that prizes announced in certain advertisements, will be awarded to those who transmit most promptly accurate solutions or answers to problems, puzzles, or questions stated therein, when such is not the fact.

(2) representing, directly or indirectly, that any person has won a prize in such contest when such is not the fact.

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

Complaint

IN THE MATTER OF

CHICAGO MACARONI COMPANY, TRADING AS A. MORICI
AND G. MATALONE COMPANY

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

Docket 2843. Complaint, June 16, 1936—Decision, Aug. 12, 1936

Where a corporate wholesale grocer engaged, among other things, in preparing, packing, selling, and distributing a table oil composed of fifteen percent olive oil from Spain, and eighty-five percent cottonseed oil, or corn oil—

Labeled containers thereof with name "Italy Brand Table Oil", and set forth thereon Italian and English statements, and words "Packed by A. Morici & G. Matalone Co.", etc., and also pictorial representations of Italian medals or coins depicting persons showing Italian characteristics, and decorative floral sprays similar to those found on other Italian products, notwithstanding fact that no part of said product was produced in or imported from Italy, and same was not packed by the fictitious concern indicated through use of name "A Morici & G. Matalone Co.", but by aforesaid corporation, the ordinary American name of which included one of the great American cities;

With tendency and capacity to deceive and mislead purchasers and prospective purchasers thereof into belief that said product's olive oil ingredient was produced in or imported from Italy, and that said A. Morici and G. Matalone Company was an Italian or Italian-American concern engaged in importing olive oil from Italy, and distributors and purchasing public into erroneous belief that said statements and representations were true, and with effect of inducing members of public to purchase said product on account of such erroneous belief, and of unfairly diverting trade to it from competitors, among whom there are those who, as manufacturers, blenders, sellers, and distributors of olive oil, table oil and other like and similar products in interstate commerce, truthfully advertise and represent the merit, origin, and packing of their respective products, and do not advertise and represent the same or any part thereof as produced in or imported from Italy when such is not the case; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. John A. Sbarbaro, 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

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Federal Trade Commission, having reason to believe that Chicago Macaroni Company, a corporation, trading as A. Morici and G. Matalone 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, Chicago Macaroni Company, trading as A. Morici and G. Matalone Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2148 Canalport Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than one year last past has been, and still is, engaged in the wholesale grocery business, and among other things prepares, packs, sells, and distributes a table oil which it labels "Italy Brand Table Oil." This preparation is a blend of olive oil and other vegetable oils intended for use in salads, cooking, baking, and other kitchen uses. When said product is sold, respondent transports or causes the same to be transported from its place of business in the State of Illinois to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade in said product sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in selling its table oil and for the purpose of creating a demand upon the part of the consuming public for said product, now causes, and for more than one year last past has caused, the containers in which said product is packed, sold and distributed to the consuming public, to be marked, branded and designated with certain descriptive advertising matter. By said means respondent makes and has made to the general public many unfair, false and misleading statements concerning its said "table oil."

On the front of such containers appear the following printed representations:

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ITALY BRAND

TABLE OIL

Un Purissimo composto di quidici per cento d'olio di oliva e ottanta cinque per cent d'altri olli vegetali.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On the back of such containers the following appears:

ITALY BRAND

TABLE OIL

An excellent composition of fifteen per cent imported olive oil and eighty-five per cent of other vegetable oils.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On both sides of such containers, the following appear:

ITALY BRAND

TABLE OIL

Best for salads, cooking, baking and all kitchen uses.

Ollo di tavola per insalata frittore e uso di cucina in generale.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

Such labels further carry pictorial representations of several Italian medals or coins whereon are depicted persons showing Italian characteristics; a picture in the nude of a boy and a girl, the former being represented as dark and the latter as blond, in harmony with the Italian concept of beauty in the two sexes; and decorative floral sprays similar to those found on other Italian products.

PAR. 3. There are among the public many purchasers who use olive oils and table oils produced in or imported from Italy in preference to similar products produced in the United States, or produced in or imported from other foreign lands, believing that olive oil produced in, or imported from Italy is superior in quality to that produced in any other country.

PAR. 4. The statements and representations set forth in paragraph 2 hereof have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of said respondent's product into the belief:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy;

(b) That said product is packed by A. Morici and G. Matalone Company and that said A. Morici and G. Matalone Company is an Italian concern and is engaged in the business of importing olive oil from Italy.

In truth and in fact, no part of said product was produced in or imported from Italy. Nor is it true, as represented, that said product is, or has been, packed by A. Morici and G. Matalone Company. The representations made by the respondent with respect to its "table oil" and the ingredients thereof, as well as the packing thereof, are false, misleading, and untrue.

PAR. 5. There are among the competitors of the respondent in interstate commerce, blenders, sellers, and distributors of like and similar products who truthfully advertise and represent the merit, origin, and packing of their respective products and who do not advertise and represent that said products or any part of said products were produced in or imported from Italy when such is not the case.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 4 hereof and into the purchase of respondent's product on account of such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in interstate commerce referred to in paragraph 5, and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 7. Said 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,"

Findings

the Federal Trade Commission, on the 16th day of June 1936, issued and served its complaint in this proceeding upon the respondent, Chicago Macaroni Company, a corporation trading as A. Morici and G. Matalone Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its attorney, John A. Sbarbora, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Chicago Macaroni Company, trading as A. Morici and G. Matalone Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2148 Canalport Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than one year last past has been, and still is, engaged in the wholesale grocery business, and among other things prepares, packs, sells, and distributes a table oil which it labels "Italy Brand Table Oil." This table oil, which is a brand of olive oil and other vegetable oils intended for use in salads, baking and other kitchen uses, is mixed and prepared by respondent in its own factory and packed in cans varying in content from one quart to one gallon. The preparation is a mixture containing 15% olive oil and 85% cottonseed oil or corn oil. The olive oil which respondent uses in preparing this table oil is not produced in Italy but is produced in Spain and from thence imported to the United States in

barrels or drums, each barrel or drum containing 55 gallons and each individual drum being marked "Product of Spain."

In manufacturing its table oil, respondent makes use of a mixing tank which will hold 366 gallons and is so labeled. When it is desired that a supply of the table oil be made, one drum or barrel of this Spanish olive oil is first dumped into this mixing tank. The mixing tank is then filled with either cottonseed oil or corn oil. By means of an electrical mixing apparatus the two oils are thus blended together in the mixing tank. When this process is completed the oil is piped into cans and sealed. Either cottonseed oil or corn oil, but never the two together, is used with the olive oil for blending into the finished product. As thus blended, the product is known and sold to the trade as "Italy Brand Table Oil."

Respondent transports its product or causes the same to be transported from its place of business in the city of Chicago, in the State of Illinois, to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade in said product sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Most of respondent's customers are of Italian nationality and extraction. When respondent sells its product it causes, and for more than one year last past has caused, the containers in which said product is packed, sold and distributed to the consuming public, to be marked, branded, and designated with certain descriptive advertising matter. In said ways and by said means respondent makes and has made to the general public many unfair, false and misleading statements concerning its said table oil.

On the front of each container of "Italy Brand Table Oil" appear the following printed representations:

ITALY BRAND

TABLE OIL

Un Purissimo composto di quindici per cento d'olio di oliva e ottanta cinque per cent d'altri olii vegetali.

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Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On the back of such containers the following appears :

ITALY BRAND

TABLE OIL

An excellent composition of fifteen per cent imported olive oil and eighty-five per cent of other vegetable oils.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

These labels further carry pictorial representations of several Italian medals or coins whereon are depicted persons showing Italian characteristics; and decorative floral sprays similar to those found on other Italian products. Respondent also represents its product as having been packed by "A. Morici & G. Matalone Co." which company is non-existent, except as a trade name used by respondent in connection with the sale of its products. Respondent's selection and use of this trade name further tends to designate and characterize its "Italy Brand Table Oil" as a product of Italy, packed by an Italian or Italian-American concern. The manufacturer, packer, and distributor of the aforesaid "Italy Brand Table Oil" is, in fact, the Chicago Macaroni Company, the respondent herein.

PAR. 3. There are among the public many purchasers who use olive oils and table oils produced in or imported from Italy in preference to similar products produced in the United States, or produced in or imported from other foreign lands, believing that olive oil produced in or imported from Italy is superior in quality to that produced in any other country.

PAR. 4. The statements and representations set forth in paragraph 2 hereof have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of said respondent's product into the belief:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy;

(b) That said A. Morici & G. Matalone Company is an Italian or Italian-American concern engaged in the business of importing olive oil from Italy.

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In truth and in fact, no part of said product was produced in or imported from Italy. Nor is it true, as represented, that said product is, or has been, packed by A. Morici & G. Matalone Company, the fact being that said product is, and has been, packed by the Chicago Macaroni Company, the respondent herein.

PAR. 5. There are, among the competitors of the respondent in interstate commerce, manufacturers, blenders, sellers, and distributors of olive oil, table oil, and other like and similar products who truthfully advertise and represent the merit, origin, and packing of their respective products and who do not advertise and represent that their products or any part of them were produced in or imported from Italy, when such is not the case.

PAR. 6. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2 and 3 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase respondent's said product on account of such erroneous belief, to the consequent damage and injury of distributors and to the injury of the general public. Said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion, and the Commission having duly considered the said motion:

It is hereby ordered, That the said motion be and the same is hereby granted; that the answer be and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn,

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue 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 record and being now fully advised in the premises:

It is hereby further ordered, That the respondent, Chicago Macaroni Company, a corporation, trading as A. Morici and G. Matalone Company, its officers, agents, servants, representatives and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of its "Italy Brand Table Oil" do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels or any other form of printed matter or by radio broadcasting, or in any other manner:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy, until and unless said olive oil ingredient of its said product is actually produced in or imported from Italy:

(b) That said A. Morici & G. Matalone Company is an Italian or Italian-American concern engaged in the business of importing olive oil from Italy:

and from making any other representations of similar tenor or import.

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.

IN THE MATTER OF
ROY C. GREENBERG AND SARAH J. ROSENHEIM, TRAD-
ING AS NEWAY MANUFACTURING COMPANY

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

Docket 2858. Complaint, June 30, 1936—Decision, Aug. 12, 1936

Where two individuals engaged in the manufacture, distribution, and sale of certain surgical latex bandages; in advertising the same in various periodicals of interstate circulation usually read by canvassers and sales agents, and by letters and circulars sent and distributed throughout the various States, to induce purchase of said products by persons suffering from certain ailments and afflictions and to induce persons to become their canvassers and sales agents—

- (a) Falsely represented that said bandage was porous and allowed the skin to breathe and the wound to heal much quicker, and that doctors and hospitals were aware that it offered the safest way on earth for them to treat patients, and that it held snugly while permitting healing air to reach the sore spot, and, while admitting air, kept out dirt and germs and offered the safest bandage known, and did not reopen the wound and resisted water;
- (b) Represented that it was no longer necessary to buy costly ankle braces, through use thereof as directed, nor to buy expensive devices for bunions or arch supports, through following directions given for such purposes, and that it was used to assist in slenderizing large and unsightly ankles; and
- (c) Represented that a salesman could start in a new business that would pay always increasing income, and "take up to \$72.00 first week";

Facts being said products were not porous in any degree unless stretched, in which event circulation was impaired, with likelihood of injury instead of benefit, nor were they, not stretched, porous, so as to permit ingress and egress of fluids, nor, in view of the usual internal causes of swollen ankles, did they, as an external bandage, possess curative value for such condition, nor, by reason of the openings required and their own non-adhesive quality, were they indicated for corns and bunions, and said various misrepresentations, as respects the effect of said products and earnings to be made from the sale thereof, were grossly exaggerated, false, and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations respecting the effectiveness of said product in the treatment of such ailments and malformations were true, and that results claimed by them would be obtained by the purchaser thereof upon use of said bandages, and with the result that a substantial number of the consuming public purchased a substantial volume of its products as a result thereof, and trade was unfairly diverted to them from competitors who truthfully advertise their respective products; to the substantial injury of competitors:

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

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Mr. Wm. T. Chantland for the Commission.

Mr. Oscar Krakow, 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 Roy C. Greenberg and Sarah J. Rosenheim, associated together under the name Neway Manufacturing Company, hereinafter referred to as "respondents," have been, and are now, 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. Respondents, Roy C. Greenberg and Sarah J. Rosenheim, associated together under the name Neway Manufacturing Company, personally and through said Neway Manufacturing Company, with office and principal place of business at 30 South Clinton Street, Chicago, Ill., are now and for some time have been engaged in the business of manufacturing, distributing, and selling in commerce as herein set out certain surgical latex bandages known as "Neway Latex Bandages."

PAR. 2. Said respondents being engaged in business as aforesaid, cause said bandages, when sold, to be transported from their office and place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondents now maintain a constant current of trade in commerce in said bandages, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling bandages, in commerce, among and between the various States of the United States and in the District of Columbia.

In the course and operation of their said business, and for the purpose of inducing the purchase of said bandages by persons suffering from certain bodily ailments and malformations and also to induce persons to become canvassers and sales agents for respondents, said respondents in their advertising in various magazines of interstate cir-

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ulation usually read by canvassers and sales agents, and by letters and circulars sent and distributed throughout the various States of the United States other than the State from which they were sent, have made numerous false and misleading representations and statements about their said product, and the earnings to be made in selling it. Among the false and misleading representations and statements so made and distributed by respondents are the following:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that this bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time "breathes," letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and "take up to \$72.00 first week."

PAR. 4. The representations made by respondents, as above set out, with respect to the effect when used of their said product, are grossly exaggerated, false, misleading, and untrue, as are their statements of the earnings to be made in selling the same.

The bandages are not porous in any degree unless stretched, and when so stretched in their application the effect is to impair the circulation with likely injury instead of benefit; neither are said bandages porous in the sense that they will permit ingress and egress of fluids. In addition thereto swollen ankles are generally caused by internal disorders either of the blood circulatory system or of the kidneys or liver, or more than one of such disease conditions. An external bandage possesses no curative value. Corns and bunions require pads with openings to relieve pressure and irritation so that no bandaging is of value and when the bandaging is non-adhesive

as respondents' is it will slip and move and irritate instead of giving relief. Likewise when bandages are tightly applied to reduce swelling they not only impair circulation but thereby cause increased swelling above the bandage.

PAR. 5. There are among respondents' competitors many who distribute and sell similar bandages who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said product in the treatment of bodily ailments and malformations, as hereinabove set out, in their advertising, in the course of distributing their product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said bandages. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' bandages with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling bandages intended for use in connection with the treatment of bodily ailments and malformations who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 June 30, 1936, issued and served its

complaint in this proceeding upon respondents, Roy C. Greenberg and Sarah J. Rosenheim, trading as Neway Manufacturing Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, respondents, Roy C. Greenberg and Sarah J. Rosenheim, filed separate answers thereto wherein they state that Roy C. Greenberg is now the sole owner of Neway Manufacturing Company, and wherein and whereby they state that they desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that they admit all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure the Commission may make, issue and serve upon respondents findings of fact, and an order to cease and desist from the violations of law charged in the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Roy C. Greenberg, and Sarah J. Rosenheim trading as Neway Manufacturing Company, have been engaged, and respondent Roy C. Greenberg is now engaged, in the business of manufacturing, distributing, and selling in interstate commerce certain surgical latex bandages known as "Neway Latex Bandages", selling said bandages in many States of the United States. When sold, the respondents mailed or shipped their said merchandise from their place of business in Chicago, Ill., to purchasers located in the said State of Illinois and in various other States, and respondent Greenberg still continues to so sell and ship.

PAR. 2. For more than two years last past the respondents have been selling said merchandise in substantial competition with other business concerns selling similar merchandise at wholesale and retail in interstate commerce by circulars circulated throughout the United States, and by various other forms of advertising, and by personal solicitation of sales agents.

PAR. 3. Respondents, in the course and operation of their said business, and for the purpose of inducing the purchase of said bandages by persons suffering from certain bodily ailments and malformations and also to induce persons to become canvassers and sales agents for them, in their advertising in various magazines of interstate circulation usually read by canvassers and sales agents, and by letters

and circulars sent and distributed throughout the various States of the United States other than the State from which they were sent, have made numerous representations and statements about their said product and the earnings to be made in selling it. Among the representations and statements so made and distributed by respondents are the following:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that their bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time "breathes", letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and "take up to \$72.00 first week."

PAR. 4. The bandages sold and distributed by respondents as aforesaid, are not porous in any degree unless stretched, and when so stretched in their application the effect is to impair the circulation with likely injury instead of benefit; neither are said bandages when not so stretched porous in the sense that they will permit ingress and egress of fluids. In addition thereto swollen ankles are generally caused by internal disorders either of the blood circulatory system or of the kidneys or liver, or more than one of such disease conditions. An external bandage possesses no curative value. Corns and bunions require pads with openings to relieve pressure and irritation so that no bandaging is of value and when bandaging is non-adhesive, as respondents' is, it will slip and move and irritate instead of giving relief. Likewise when bandages are tightly applied to reduce swelling they not only impair circulation but thereby cause increased swelling above the bandage.

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The representations made by respondents, as above set out in paragraph 3 of these findings with respect to the effect when used of said product, are grossly exaggerated, false, misleading, and untrue, as are the statements of the earnings to be made in selling the same.

PAR. 5. There have been and are among respondents' competitors many who distribute and sell similar bandages who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by respondents as to the effectiveness of their said product in the treatment of bodily ailments and malformations, as hereinabove set out, in their advertising in the course of distributing said product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said bandages. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' bandages with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling bandages intended for use in connection with the treatment of bodily ailments and malformations who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. Respondent, Sarah J. Rosenheim is not now and has not been since prior to June 30, 1936, associated with the respondent Roy C. Greenberg in conducting said business and Roy C. Greenberg has been since prior to June 30, 1936, and now is the sole owner of the business conducted under the name Neway Manufacturing Company.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, filed herein on June 30, 1936, and the separate answers of the respondents Roy C. Greenberg and Sarah J. Rosenheim filed herein, in which answers they state that they desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that they admit all of the material allegations in the complaint to be true, and that without further evidence, or other intervening procedure, the Commission may make, enter, issue and serve its findings of fact and conclusion and order to cease and desist from the violations of law charged in the complaint and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondents, Roy C. Greenberg, and Sarah J. Rosenheim, individually or as copartners trading as Neway Manufacturing Company, personally or through their representatives, agents, or employees, or by or through the use of Neway Manufacturing Company or of any other trade name or device, in connection with the sale and distribution in interstate commerce or in the District of Columbia of latex bandages, forthwith cease and desist from directly or indirectly representing:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that this bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time "breathes," letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

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(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and "take up to \$72.00 first week."

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

Syllabus

IN THE MATTER OF
BRECHT CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2662. Complaint, Dec. 18, 1935—Decision, Aug. 15, 1936¹*

Where a corporation engaged in manufacture and sale of candy, including "break and take," and "draw" or "deal" assortments, in which, as the case might be, (1) chance selection of one of a number of individually wrapped penny pieces of uniform size and shape, enclosed yellow colored center of which differed from that of majority, entitled purchaser to receive, without charge, one of the larger pieces or bars of candy, included therewith, and in which purchaser of last penny piece, likewise received, without charge, the small package of candy similarly included; (2) particular legend secured by chance from push card included with assortment, entitled 5-cent purchaser, in accordance with card's explanatory statement and legend secured, to one, two, three, four, or five candy bars, and in which final purchaser received four of said bars in accordance with such advisory statement; and (3) chance selection of number, as disclosed by punch on 600-hole board included with assortment, entitled purchaser to bar or to box of candy, as case might be; and including also other similar assortments with other types of candy and punch boards with larger or smaller number of holes, as case might be, stocked and made up by it on request of customers—

Sold said various assortments, with cards or boards, as aforesaid to wholesalers, jobbers, and retailers, knowingly assembled and packed for resale without alteration, addition, or rearrangement to consuming, purchasing public by retailers which, as sellers of its said product, included, generally, in case of the concealed, colored center assortments, candy stores near schools and small grocery stores, and in case of punch board assortments, more often, though not exclusively, cigar stores, pool rooms, and places frequented by men, and stores of which retailers, in case of the small establishments, are frequently near schools and attract the trade of children, principal consumer-purchasers of the lottery or prize candy, and who, given choice, purchase same in preference to the "straight" goods because of lottery or gambling feature connected therewith and chance of becoming a winner;

With result that some competitors, dealing in "straight" goods candy only, and who, like many, regard sale and distribution of other as morally bad, and as encouraging gambling, and especially among children, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and who refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, and who can compete on even terms only by giving same or similar devices to retailers, were put to a disadvantage, some competitors began sale and distribution of candy to public

¹ Order, however, published as of Nov. 13, 1936.

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by lot or chance to meet demand for candy thus sold and competition of manufacturers who thus sell and distribute their products, sale of "straight" goods candy by aforesaid unwilling competitors showed a continued decrease, as did sale of such candy whenever and wherever the lottery or prize candy appeared in its markets, by reason of gambling or lottery feature connected with former, public and competitors were prejudiced and injured, and trade was diverted from latter to it, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved, and a violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Wilbur F. Denious and *Mr. Hudson Moore*, of Denver, Colo., and *Mr. Walter J. 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 Brecht Candy 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 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 is a corporation, organized under the laws of Colorado with its principal place of business in the city of Denver, State of Colorado. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale 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 place of business in the city of Denver, State of Colorado, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged

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in the sale and distribution of candy and candy products 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, respondent sells and has sold to wholesale and retail dealers, various 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of 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 pieces of candy of uniform size, shape, and quality, in the following manner:

The majority of the said pieces of candy of uniform size, shape, and quality, have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality, retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a center 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 color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy having a center colored differently from the majority thus procure one of the said larger pieces of candy wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of candy bars together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a legend is disclosed. Sales are 5¢ each and the card bears statements informing customers and prospective customers as to the number of bars which are to be given with the particular legends. For example:

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BASEBALL

EVERY PLAY RECEIVES ONE OR MORE CANDY BARS

Home Run Receives.....	8 candy bars
Three Base Hit Receives.....	7 candy bars
Two Base Hit Receives.....	6 candy bars
One Base Hit Receives.....	5 candy bars
Stolen Base Receives.....	3 candy bars
Base on Balls Receives.....	3 candy bars
Hit by Pitcher Receives.....	2 candy bars
Sacrifice Hit Receives.....	1 candy bar
Out Receives.....	1 candy bar
Last Play Receives.....	5 candy bars

The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of candy bars which a customer receives for the price of 5¢ is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy and a number of boxes or packages of candy together with a device commonly called a punch board. The bars and packages or boxes of candy in said assortment are distributed in the following manner:

The punch board has a number of holes and in each hole is a slip of paper bearing a number. There are as many numbers as there are holes in the board, but the slips are not arranged in numerical sequence. Punches from said board are 5¢ each and when a punch is made, a number is disclosed. The board bears statements or legends informing the customer and prospective customer which numbers receive the packages or boxes of candy. All other numbers receive a bar of candy. The numbers on said board are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one of the bars of candy or one of the packages or boxes of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy 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 sales plans hereinabove set forth, as a means of inducing purchasers thereof to pur-

chase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) additional bars of candy; or (c) packages or boxes of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof, and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 December 18, 1935, issued and served a complaint upon the respondent, Brecht Candy Company, a corporation, charging that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

After the issuance of said complaint, the respondent having failed to file answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore designated by it. The respondent was represented by Messrs. Wilbur F. Denious and Hudson Moore, of Denver, Colo., and by Walter J. Hughes, of Chicago, Ill., but offered no testimony or evidence in defense of the charges of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and evidence and brief in support of the complaint, respondent having failed to file any brief, and not having indicated a desire to orally argue the matter, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Brecht Candy Company, is a corporation organized under the laws of the State of Colorado, with

its principal office and place of business in the city of Denver, Colo. Respondent is now and for several years last past has been engaged in the manufacture of candy in Denver, Colo., and in the sale and distribution of said candy to retail and wholesale dealers located in the State of Colorado and in the States of Montana, New Mexico, Arizona, and Wyoming. It causes said candy when sold to be shipped or transported from its principal place of business in Denver, Colo., to purchasers thereof in the above-named States. In so carrying on said business respondent is, and has been, in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent is an assortment designated as "150 Tuckaway" composed of a number of small pieces of wrapped candy of uniform size and shape, together with a number of larger pieces or bars of candy, and a small package of candy. The larger bars of candy, and the small package of candy are given as prizes to the ultimate purchasers or consumers of said small wrapped candies in the following manner:

The majority of the said small wrapped candies in said assortment have white centers, but a small number have yellow centers. The color of the center of the said small wrapped pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said small wrapped candies retail at the price of 1¢ each, but the purchaser or consumer who procures one of the said candies having a yellow center is entitled to receive, and is to be given free of charge, one of the larger pieces or bars of candy. The purchaser or consumer who obtains the last piece of small wrapped candies in said assortment is entitled to receive, and is to be given free of charge, the small package of candy. The larger pieces or bars of candy and the small package of candy contained in said assortment are thus distributed to purchasers of the small wrapped candies wholly by lot or chance.

Respondent has from time to time distributed various assortments involving the same principle or sales plan, but varying in detail.

PAR. 3. Another assortment manufactured and sold by respondent and designated "Play Ball" consists of a number of bars of candy, together with a device commonly called a "push card." The push card included with this assortment bears legends at the top thereof stating the manner in which the candy is to be distributed to the purchasers or consumers. These legends are as follows:

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PLAY BALL

5¢ A SALE

5¢ A SALE

ALL WINNERS	NO BLANKS
HOME RUN Receives.....	5 Candy Bars
3 Base Hit Receives.....	4 Candy Bars
2 Base Hit Receives.....	3 Candy Bars
1 Base Hit Receives.....	2 Candy Bars
Base on Balls Receives.....	1 Candy Bar
Foul Ball Receives.....	1 Candy Bar
Strike Out Receives.....	1 Candy Bar

Last Sale Receives 4 Candy Bars

The push card also has immediately below the legends quoted 110 partially perforated discs, and under each disc is a number effectively concealed from purchasers, and prospective purchasers, until a "push" or selection has been made and the particular disc separated from the card. The legends on said discs correspond to the legends shown at the top of the card, and the candy bars contained in said assortment are distributed to purchasers in accordance with the said legends. Sales are 5¢ each and the fact as to whether a purchaser receives one or more than one bar of candy for the price of 5¢ is thus determined wholly by lot or chance.

Here also, as in paragraph 2 above, the respondent has from time to time manufactured and sold various assortments involving the same principle or sales plan, but varying in detail.

PAR. 4. Prior to the hearing in this case the respondent manufactured and distributed several assortments of candy with which was included a device commonly called a "punch board."

One such assortment consisted of a number of bars of candy, a number of boxes of candy, and a punch board having 600 holes therein. In each of the holes on said punch board a slip of paper bearing a number was secreted. The number on the said slip of paper was effectively concealed from purchasers or prospective purchasers until a punch or selection had been made and the slip of paper removed from the board. There were legends or statements at the top of the board informing customers and prospective customers as to which numbers received a bar of candy and which numbers received a box of candy. The fact as to whether a purchaser received a bar of candy or one of the boxes of candy for the price of a single punch or selection was thus determined wholly by lot or chance.

Other assortments contained other types of candy, together with punch boards, some of which had a smaller number of holes, and some of which had a larger number of holes. An officer of the respondent corporation testified that these assortments with which a

punch board was included were not now regularly stocked by the respondent, but that such punch boards were carried in its stock and assortments were made up on request of its customers.

PAR. 5. The candy assortments involving the lot or chance feature, as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "break and take", "draw", or "deal" assortments. Assortments of candy without the lot or chance 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 designate these types of assortments.

PAR. 6. Numerous retail dealers purchase, and have purchased, the assortments described in paragraphs 2, 3, and 4, above, direct from respondent or from wholesale dealers and jobbers who in turn have purchased said packages or assortments from the respondent. Such retail dealers display such assortments for sale to the public as packed and assembled by the respondent, and the candy contained in said assortments is sold and distributed to the consuming public as suggested by the respondent or by means of the push card or punch board furnished by respondent, and in accordance with the legends printed on the said push cards or punch boards.

PAR. 7. The respondent sells its merchandise to retail dealers and to wholesale dealers and jobbers in the States of Colorado, Montana, New Mexico, Arizona, and Wyoming, and respondent's merchandise is resold to the public in practically all stores where candy is sold. An officer of the respondent corporation testified that assortments as described in paragraphs 2 and 3 were sold generally in candy stores in the vicinity of schools and small grocery stores selling candy. And with reference to the assortments with which a punch board is included (referred to in paragraph 4), they are more often resold, though not exclusively, in cigar stores and pool rooms and places where men congregate and deal.

All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the retail dealers, or to the wholesale dealers and jobbers. The assortments are packed in such manner that they can be displayed and offered for sale, without alteration, addition, or rearrangement, to the consuming public by means of a lottery, gaming device, or gift enterprise.

In the sale and distribution to retail dealers and to wholesale dealers and jobbers for resale to retail dealers of assortments of candy assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the 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, without alteration, addition, or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 8. Many competitors of respondent regard such methods of sale and distribution as morally bad and as 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. 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" candy show a continued decrease.

There is a 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 resold 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 respondent's 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 principal demand in the trade for the "break and take," or "deal", or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take", or "draw", or "deal" assortments and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take", or "draw", or "deal" 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. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight" candy in interstate commerce in competition with the "break and take", or "draw", or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature indicated with the "break and take", or "draw", or "deal" candy.

PAR. 11. The exact annual volume of respondent's business was not shown but an officer of the respondent corporation testified, and the Commission finds, that the annual volume of respondent's business is substantial.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Brecht Candy Company, a corporation, 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 are unfair methods of competition in commerce and constitute 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, no answer having been filed to the complaint, and no testimony having been offered in opposition thereto, and upon the brief herein filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress

¹ Published, as modified, as of November 13, 1936.

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, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution by it in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, or may be 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 contained in said assortments 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 and shape having centers of a different color, together with larger pieces or bars of candy, or small packages of candy, which said larger pieces or bars of candy or small packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a "push card" or a device commonly called a "punch board", for use, or which may be used, in distributing said candy to the public at retail.

And it is further ordered, That the respondent, Brecht 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.

Complaint

IN THE MATTER OF

BOSTON SPORTSWEAR COMPANY ET AL.

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

Docket 2755. Complaint, Apr. 3, 1936—Decision, Aug. 19, 1936

Where five corporations and three individuals engaged in manufacture of flannel skirts and sale thereof to purchasers in States other than their own State of manufacture—

- (a) Entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, suppress, and eliminate competition in the sale and distribution of said products to purchasers thereof located throughout the States by agreeing to quote and sell said skirts at a uniform price of \$16.50 per dozen; and
- (b) Severally notified, thereafter, their respective customers by identical written notice to effect that the price of said articles had been fixed as aforesaid and that same had been agreed to by said corporations and individuals, and sold same, pursuant thereto, at said price;

With effect of unduly tending to substantially lessen, restrict and suppress competition in interstate sale of flannel skirts throughout the United States and particularly in the New England States, in which they constituted practically all of the manufacturers thereof:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. William M. Silverman, of Boston, Mass., for Gordon Maid Skirt Co., Inc. and *Hurwitz & Hurwitz*, of Boston, Mass., for Louis Maltzman.

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 Boston Sportswear Company, Robert Hamilt, an individual trading as Bobby Sportswear Company, Gordon Maid Skirt Company, Inc., Louis Wadman Company, a corporation trading as Oxford Sportswear Company, Louis Maltzman, an individual trading as Simmons Sportswear Company, Schwartz Sportswear Company, Inc., Weatherproof Clothing Mfg. Company, and David A. Sallop, an individual trading as Peerless Sportswear Company, hereinafter referred to as respond-

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ents, 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Boston Sportswear Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 72 Kneeland Street, Boston, Mass.

PAR. 2. Said respondent, Robert Hamilt, is an individual trading as the Bobby Sportswear Company with his principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 3. Said respondent, Gordon Maid Skirt Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 4. Said respondent, Louis Wadman Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass., and doing business under the trade name of the Oxford Sportswear Company.

PAR. 5. Said respondent, Louis Maltzman, is an individual trading as Simmons Sportswear Company with his principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 6. Said respondent, Schwartz Sportswear Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 7. Said respondent, Weatherproof Clothing Mfg. Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 146 Court Street, Brockton, Mass.

PAR. 8. Said respondent, David A. Sallop, is an individual trading as Peerless Sportswear Company with his principal office and place of business located at 1394 Dorchester Avenue, Dorchester, Mass.

PAR. 9. Each and all of the said respondents have for more than one year last past been and now are engaged in the manufacture of flannel skirts which the said respondents sell to purchasers located in States other than the State of Massachusetts, causing said flannel skirts when sold to be transported from the place of manufacture within the State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts.

Findings

PAR. 10. Said respondents, on or about October 5, 1935, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts to purchasers thereof located throughout the several States of the United States, as aforesaid by agreeing to quote and sell said flannel skirts at a uniform price of \$16.50 per dozen. Thereafter each of the said respondents distributed to their respective customers identical written notice to the effect that the price of flannel skirts would be \$16.50 per dozen, and that the same had been agreed to by the said respondents and pursuant thereto sales were made of the said skirts at the price of \$16.50 per dozen.

PAR. 11. The result of the acts of the said respondents, as hereinbefore set out in paragraph 10, has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of flannel skirts throughout the United States and particularly in the New England States where the respondents constitute practically all of the manufacturers of flannel skirts.

PAR. 12. The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and to the retail dealer handling flannel skirts in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and 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 April 3, 1936, issued and served its complaint in this proceeding upon the respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents answered the said complaint, and in said answers admitted the allegations of the complaint and the facts therein set forth to be true, and stated that they waived hearing on the charges set forth in the complaint, that they refrain from contesting the proceeding, and that they consented that the Commission make, enter, issue and serve upon them without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from

the methods of competition alleged in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission having duly considered the same, and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Boston Sportswear Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 2. Respondent, Robert Hamilt, is an individual trading as the Bobby Sportswear Company with his principal office and place of business in Boston, Mass.

PAR. 3. Respondent, Gordon Maid Skirt Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 4. The respondent, Louis Wadman Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass., and doing business under the trade name of the Oxford Sportswear Company.

PAR. 5. Respondent, Louis Maltzman, is an individual trading as Simmons Sportswear Company with his principal office and place of business in Boston, Mass.

PAR. 6. Respondent, Schwartz Sportswear Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 7. Respondent, Weatherproof Clothing Mfg. Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business at Brockton, Mass.

PAR. 8. Respondent, David A. Sallop, is an individual trading as Peerless Sportswear Company with his principal office and place of business in Dorchester, Mass.

PAR. 9. Each and all of the said respondents have for more than one year last past been, and now are engaged in the manufacture of flannel skirts which the said respondents sell to purchasers located in States other than the State of Massachusetts, causing said flannel skirts when sold to be transported from the place of manufacture within the State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts.

PAR. 10. In the course and conduct of their business, the said respondents were at all times herein referred to in competition with

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

PAR. 11. Said respondents, on or about October 5, 1935, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts to purchasers thereof located throughout the several States of the United States, as aforesaid by agreeing to quote and sell said flannel skirts at a uniform price of \$16.50 per dozen. Thereafter each of the said respondents distributed to their respective customers identical written notice to the effect that the price of flannel skirts would be \$16.50 per dozen, and that the same had been agreed to by the said respondents and pursuant thereto sales were made of the said skirts at the price of \$16.50 per dozen.

PAR. 12. The results of the acts of the said respondents, as hereinbefore set out in paragraph 11, has been to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of flannel skirts throughout the United States and particularly in the New England States where the respondents constitute practically all of the manufacturers of flannel skirts.

CONCLUSION

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

ORDER TO CEASE AND DESIST

The respondents in and by their answers having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the said proceeding, and having admitted in their answers the truth of the allegations and facts set forth in the complaint, and having consented in their said answers that the Commission, without hearing or further procedure, might make, enter, issue and serve upon said respondents findings of fact and conclusion and an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises:

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It is hereby ordered, That the respondents, their officers, agents, representatives and employees, in connection with the offering for sale, and sale of their flannel skirts in interstate commerce, forthwith cease and desist from:

(1) Any understanding, agreement, combination or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts in interstate commerce, by agreeing to quote and sell said flannel skirts at a uniform price.

(2) Distributing to their respective customers identical notice to the effect that the price of flannel skirts would be at a uniform price.

It is further ordered, That within 60 days from the date of the service of this order upon said respondents that they file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

Syllabus

IN THE MATTER OF
METROPOLITAN SURGICAL INSTRUMENT COUNCIL,
INC., ET AL.

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

Docket 2409. Complaint, May 28, 1935—Order, Aug. 21, 1936.

Consent order requiring respondent council, its officers, agents, representatives, and employees in connection with the sale in interstate commerce of surgical instruments and appliances to cease and desist from—

- (a) Combining or uniting to fix and establish uniform prices at which members of respondent association or others should sell such products;
- (b) Printing and publishing lists containing the names of dealer members of said association, so as to include in said lists only so-called regular or "recognized" dealers, distributors, and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "non-recognized" dealers, distributors, and wholesalers of said products, and supplying said lists to manufacturers of surgical instruments and appliances;
- (c) Maintaining coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them to refrain from selling said products to other dealers, distributors, and wholesalers who are not members of said association; and
- (d) Procuring the adherence of members of said association to a schedule of prices agreed upon, by a system of fines exacted from members making sales of said commodities at prices less than those set out in said schedules; and

Ordered further that the complaint against certain individuals named in the complaint as officers and former officers and leaders in the activities of respondent association be and the same is dismissed for the reason that the order against the trade respondents, their owners, officers, employees, and agents, adequately and effectively restores free and open competition between and among all of the respondents engaged in selling surgical instruments and appliances in interstate commerce; and

Ordered further that the complaint against respondent Wasserman, trading as City Surgical Co., be and it is dismissed for the reason that said respondent did not take membership nor participate in any activities of the Metropolitan Surgical Instrument Council, Inc.; and

Ordered further that complaint against respondent Rifkin be dismissed for the reason that said respondent retired from business in the month of December 1934, and did not participate in the activities of the Metropolitan Surgical Instrument Council, Inc.

Before *Mr. W. W. Sheppard* and *Mr. Edward M. Averill*, trial examiners.

Mr. P. C. Kolinski for the Commission.

Mr. Sanford H. Cohen and *Mr. George Cohen*, of New York City, for Metropolitan Surgical Instrument Council, Inc., and various officers and members thereof.

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Cotton, Brenner & Wrigley, of New York City, for Oscar Cochran and Cochran Physicians' Supplies, Inc.

Mr. John L. Lockwood, of New York City, for E. G. Pfarre and George Tiemann & Co.

Mr. Philip Wagner, of New York City, for Jacob Beeber.

Mr. William Helfer, of New York City, for Samuel Wasserman.

Mr. James A. Dougherty, of Greenville, Conn., for Margaret A. Dougherty.

Mr. Leon Forst, of New York City, for Eugenie Siegel.

Mr. Sylvester Benjamin, of Brooklyn, N. Y., for Low Surgical Co. and Thiemann, Boettcher & Co., Inc.

Mr. Charles M. Werner, of New York City, for Werner Surgical Supplies, Inc.

Morris & Silverman, of New York City, for Lester Van Wagner.

Mr. Milton J. Pashman, of Passaic, N. J., for Morris Minsky and Robert Caverly.

Mr. Sidney B. Rosenthal, of Paterson, N. J., for Service Surgical Supply Co., and also along with *Mr. J. Leon Friedman*, of New York City, for Samuel G. Krebs.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 each and all of the parties named in the caption hereof, 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Metropolitan Surgical Instrument Council, Inc., is a corporation incorporated under the laws of the State of New Jersey, whose membership is composed of individuals, partnerships, and corporations with their respective places of business in the cities of New York and Brooklyn, State of New York, and the cities of Newark, Passaic, Paterson, Elizabeth, and Jersey City in the State of New Jersey, engaged in selling surgical instruments and appliances to doctors, hospitals, and individuals located respectively in said States, in neighboring States, and throughout the world. Said members are banded together in said Metropolitan Surgical Instrument Council, Inc., hereinafter referred to as "Association", for the purpose of promoting their common interests and business affairs.

Respondents Ben Gordon, Oscar Cochran, John C. Lindsey, C. Invedinato, Edward Low, Anthony J. Jamison, and H. S. Nussbaum, are respectively president, 1st vice president, 2nd vice president, 3rd vice president, treasurer, recording secretary, and corresponding secretary, of said association, in charge of conducting and administering its activities and affairs.

Respondents Nathan S. Low, Victor W. Filler, Benjamin J. Perlstein, E. G. Pfarre, S. B. Amsterdam, George Dornhaefer, George J. Young, Maurice F. Powell, and Robert Horwitz are former officers and leaders in the activities of said association. The members of the association are as follows:

Respondent Jacob Beeber, an individual doing business under the trade name and style of J. Beeber Company, with his place of business located in New York City, N. Y.;

Respondent Samuel Wasserman, an individual doing business under the trade name and style of City Surgical Company, with his place of business located in New York City, N. Y.;

Respondent Cochrane Physicians' Supplies, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Margaret A. Dougherty, an individual doing business under the trade name and style of James T. Dougherty Medical Center, with her place of business located in New York City, N. Y.;

Respondent F. Eissner & Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Meyer A. Feinberg, an individual with his place of business located in New York City, N. Y.;

Respondent Eugenie Siegel, an individual doing business under the trade name and style of Fordham Surgical Store, with her place of business located in New York City, N. Y.;

Respondent Harry M. Falk, an individual doing business under the trade name and style of Guarantee Truss Company, with his place of business located in New York City, N. Y.;

Respondent Harold Surgical Corporation, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Raymond Kramer, an individual with his place of business located in New York City, N. Y.;

Respondent Rose Kramer, an individual doing business under the trade name and style of Kramer Surgical Stores, with her place of business located in New York City, N. Y.;

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Respondent Samuel G. Krebs, an individual doing business under the trade name and style of S. G. Krebs Company, with his place of business located in New York City, N. Y.;

Respondent N. S. Low, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Low Surgical Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Manhattan Surgical Instrument Company, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent T. H. McKenna, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent F. L. Noble Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent M. B. Picker Corporation, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Barney B. Rifkin, an individual with his place of business located in New York City, N. Y.;

Respondent George Tiemann & Company, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Thiemann, Boettcher & Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent United Surgical Supplies Corp., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Werner Surgical Supplies, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Wregg, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Robert Horwitz, an individual doing business under the trade name and style of Bedford Surgical Company, with his place of business located in Brooklyn, N. Y.;

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Respondents Meyer Palinsky and Ellis Palinsky, copartners, doing business under the trade name and style of Brill Surgical Instrument Company, with their place of business located in Brooklyn, N. Y.;

Respondent Cornell Laboratories, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Charles C. Edinger, an individual doing business under the trade name and style of Charles C. Edinger Company, with his place of business located in Brooklyn, N. Y.;

Respondent Anthony J. Jamison, an individual doing business under the trade name and style of Jamison Laboratories, with his place of business located in Brooklyn, N. Y.;

Respondent The John C. Lindsay Company, a corporation organized under the laws of the State of New York, and doing business under the firm name and style of Lindsay Laboratories, with its office and principal place of business located in Brooklyn, N. Y.;

Respondents Bernard S. Cohen, Irving M. Cohen and Leo Cohen, copartners, doing business under the trade name and style of Long Island Surgical Supply Company, with their place of business located in Brooklyn, N. Y.;

Respondent Modern Hospital Supply Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent National Surgical Stores, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Park Surgical Company, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Powell Surgical Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Roberts & Quinn, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Charles Kazdin, an individual doing business under the trade name and style of Unity Surgical Supply Co., with his place of business located in Brooklyn, N. Y.;

Respondent Lester Van Wagner, an individual doing business under the trade name and style of Van Wagner & Co., with his place of business located in Brooklyn, N. Y.;

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Respondent West End Surgical Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Benjamin Weisberg, an individual doing business under the trade name and style of White Surgical Company, with his place of business located in Brooklyn, N. Y.;

Respondent George J. Young, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Amsterdam Bros., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located in Newark, N. J.;

Respondents Morris Minsky and Robert Caverly, copartners, doing business under the trade name and style of Bellevue Surgical Supply Company, with their place of business located in Passaic, N. J.;

Respondent Cosmevo Surgical Supply Company, a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Paterson, N. J.;

Respondent Livezey Surgical Supply, Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Newark, N. J.;

Respondent Medical Service Co., Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Newark, N. J.;

Respondent New Jersey Medical Supply Co., Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Jersey City, N. J.;

Respondent Service Surgical Supply Company, a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Paterson, N. J.;

Respondent Frank Scharfenberger, an individual doing business under the trade name and style of Scharfenberger's, with his place of business located at Elizabeth, N. J.;

Respondent William R. Walsh, an individual doing business under the trade name and style of William R. Walsh Company, with his place of business located at Newark, N. J.

PAR. 2. The aforesaid respondent members of the Metropolitan Surgical Instrument Council, Inc., are dealers, distributors, and wholesalers of surgical instruments and appliances. Said respondent members purchase aforesaid products in which they deal directly and immediately from manufacturers thereof, located in various States, and said manufacturers ship said products when so purchased from their respective places of business in such other States to said mem-

bers in the States of New York and New Jersey. In the course and conduct of their aforesaid respective businesses, respondent members, but for the matters and things hereinafter set out, would have been and would still be naturally and normally in competition with each other and with other individuals, partnerships, and corporations also engaged in the purchase of surgical instruments and appliances from aforesaid manufacturers located in States other than the State of New York, and the resale thereof in the State of New York and neighboring States. Respondent members, by virtue of their membership in said association, designate themselves as "recognized" dealers, distributors, and wholesalers as distinguished from such surgical instrument dealers in said trade area, who are not members of said association.

The respective members of the respondent association constitute a large and important part of the dealers in surgical instruments and appliances in the New York trade area; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to, and from said trade area. Said members, as allied and banded together in said association, are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits. Mail orders form a large proportion of the business in this industry and New York City is known as the center of such industry in this country. In the manufacture of surgical instruments there is a diversity of appliances, and most manufacturers concentrate on the marketing of a patented or specialized device. No manufacturer markets a full line of surgical instruments, and it is therefore necessary for dealers in surgical instruments to purchase their stock from many sources of supply.

PAR. 3. In October 1933, or thereabouts, the respondents named in paragraph 1 hereof united in a common course of action and combined, conspired and confederated together and with others to prevent said competing dealers in surgical instruments and appliances, mentioned in paragraph 2 hereof, from obtaining surgical instruments and appliances directly from aforesaid manufacturers thereof; to establish respondent members as a class of "recognized" surgical instrument and appliance dealers in the said New York City trade area; to fix and establish uniform prices at which said members of respondent association should sell said products and to prevent said members and others from selling at less prices and by and through the aforesaid means to suppress, hinder, and lessen competition in substantial commerce in the selling and distribution of said products in

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the aforesaid territory served by respondents. To carry out the aforesaid purposes the respondents have done, among others, the following acts and things:

(a) Exacted and procured pledges and other promises or agreements from each such "recognized" dealer and each member of respondent association and from manufacturers of surgical instruments and appliances to the effect that such dealers, members, and manufacturers would support, adhere to, and enforce the foregoing program of respondents set forth in paragraph 3 hereof.

(b) Printed and published lists (so-called "white lists") containing the names of "recognized" dealer members of said association, so as to include in said lists only so-called legitimate, regular, or "recognized" dealers, distributors, and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "non-recognized" dealers, distributors, and wholesalers of said products, and supplied said lists to aforesaid manufacturers, and by the means and methods hereinafter set forth persuaded, induced, and compelled said manufacturers to cease dealing with and to refuse to open accounts with the dealers, distributors, and wholesalers so reported.

(c) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to other dealers, distributors and wholesalers who were not members of said association.

(d) Held meetings of respondent association, its members, officers, and executive committee, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, dealers, and wholesalers and others engaged in said surgical instrument and appliance trade and industry to abide by and adhere to said program.

(e) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed and advised such manufacturers of the names of said "recognized" dealers in said New York City trade area, and of respondents' purpose and determination to insist upon and require such manufacturers to distribute their products through the medium of said "recognized" dealers exclusively, and in conformity with the aforesaid program of respondents; and also advised such manufacturers that their sale and distribution of surgical instruments and appliances direct to certain

non-recognized dealers and purchasers, or their failure to conform to aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against respondents and such "recognized" dealers.

(f) Denied membership in respondent association and such "recognition" of dealers who failed to support, abide by or carry out said program of respondents, and otherwise disciplined such members and dealers.

(g) Fixed and established by agreement schedules of uniform minimum prices for the sale of the commodities dealt in by them in the territory of said association. The prices thus established were enhanced beyond the prices which would prevail under natural and normal competition in said industry in the absence of said price agreements.

(h) Procured the adherence of members of said association to and the maintenance of the schedule of prices agreed upon, by a system of fines exacted from members making sales of said commodities at prices less than those set out in said schedules.

(i) Used and engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the foregoing program and agreement, combination, conspiracy, confederation, and undertaking set forth in paragraph 3 hereof.

PAR. 4. The Code of Fair Competition for the Surgical Distributors Trade was approved August 24, 1934, by the President, pursuant to the provisions of Title I of an Act of Congress approved June 16, 1933, entitled "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." Said Code specifically prohibits monopolistic practices and the oppression of and discrimination against small enterprises; and said Code further specifically prohibits interference with sources of supply and discrimination against competitors not affiliated with trade associations. The acts and practices of respondents, as hereinbefore set forth, were, and are, in direct violation of the express provisions of said Code of Fair Competition, are in no manner whatsoever justified by any interpretation of such Code, and are contrary to the plain intent and meaning of said Code of Fair Competition.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents set forth in paragraph 3 hereof are and have been in aforesaid New York City trade area and other related or connected territory: to close and curtail sundry outlets

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within the States of New York and New Jersey for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the States of New York and New Jersey; to monopolize, in said respondent members and recognized dealers, the business of dealing in and distributing surgical instruments and appliances; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said surgical instrument and appliance industry in the States of New York and New Jersey, and to deprive the purchasing public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing surgical instruments and appliances; to hold at an artificially high level prices for such surgical instruments and appliances to hospitals, the medical profession and the purchasing public; and to deprive the purchasing public and the medical profession and hospital institutions of the benefits to accrue from competition among dealers in the surgical instrument and appliance trade.

PAR. 6. The above alleged acts and things done by respondent as set forth in paragraphs 3 and 4 hereof are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said 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

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 May 28, 1935, issued its complaint against the above named respondents, in which 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.

The following respondents filed answers:

Metropolitan Surgical Instrument Council, Inc., Harry M. Falk, trading as Guarantee Truss Company; Harold Surgical Corpora-

tion; Rose Kramer, trading as Kramer Surgical Stores; N. S. Low, Inc.; T. H. McKenna, Inc.; Meyer Palinsky and Ellis Palinsky, co-partners trading as Brill Surgical Instrument Co.; Charles C. Edinger, trading as Charles C. Edinger Co.; Anthony T. Jamison, trading as Jamison Laboratories; The John C. Lindsay Co., corporation trading as Lindsay Laboratories; Modern Hospital Supply Co., Inc.; National Surgical Stores, Inc.; West End Surgical Co., Inc.; Amsterdam Bros.; Cosmevo Surgical Supply Company; Livezey Surgical Supply, Inc.; Frank Scharfenberger, trading as Scharfenberger's; Medical Service, Inc.; Robert Horwitz, trading as Bedford Surgical Co.; Bernard S., Irving M. & Leo Cohen, trading as Long Island Surgical Supply Co.; Park Surgical Co., Inc.; Roberts & Quinn, Inc.; Charles Kazdin, trading as Unity Surgical Supply Co.; and New Jersey Medical Supply Co., Inc., appearing by Sanford H. Cohen, their attorney;

Jacob Beeber, trading as J. Beeber Co., appearing by Philip Wagner, his attorney;

Eugenie Siegel, trading as Fordham Surgical Store, appearing by Leon Forst, her attorney;

George Tiemann & Company, a corporation, appearing by John W. Lockwood, its attorney;

Samuel G. Krebs, trading as S. G. Krebs Company, appearing by J. Leon Friedman, his attorney;

Werner Surgical Supplies, Inc., a corporation, appearing by Charles M. Werner, its attorney;

Lester Van Wagner, trading as Van Wagner & Co., appearing by Morris & Silverman, his attorneys;

Morris Minsky and Robert Caverly, trading as Bellevue Surgical Supply Company, appearing by Milton J. Pashman, their attorney;

Service Surgical Supply Co., Inc., a corporation, appearing by Sidney Rosenthal, its attorney;

George J. Young, Inc., a corporation, appearing by Sylvester Benjamin, its attorney;

F. Eissner & Co., Inc.;

Manhattan Surgical Instrument Company;

F. L. Noble Co., Inc.;

Barney B. Rifkin;

United Surgical Supplies Corporation;

Wregg, Inc.;

Cornell Laboratories, Inc.;

Individuals named as officers and active members of the Metropolitan Surgical Instrument Council, Inc., made appearance and filed answers by attorneys Sanford H. Cohen and John L. Lockwood. Re-

spondent Samuel Wasserman, an individual trading under the firm name and style of City Surgical Company, filed an affidavit disclaiming any membership in respondent Metropolitan Surgical Instrument Council, Inc.

On June 3, 1936, a hearing was convened for the taking of testimony as to the following ten respondents who had failed to appear or answer: Cochrane Physicians' Supplies, Inc.; Margaret A. Dougherty, trading as James T. Dougherty Medical Center; Meyer A. Feinberg; Raymond Kramer; Low Surgical Co., Inc.; M. B. Picker Corporation; Thiemann, Boettcher & Co., Inc.; Powell Surgical Co.; Benjamin Weisberg, trading as White Surgical Company; William R. Walsh, trading as William R. Walsh Company. During the progress of the hearing these ten respondents decided not to contest the proceeding and signed consent answers under Rule V (b) of the Rules and Practice prevailing at the time this proceeding was originally noticed for hearing.

On the 21st day of August 1936, the Federal Trade Commission granted leave to respondents, who signed consent answers, to file such answers; and granted leave to respondents, who had previously filed answers, to file amended answers, wherein the respondents 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 surgical instruments and appliances, and the Commission being fully advised in the premises;

It is now ordered, That the respondent, Metropolitan Surgical Instrument Council, Inc., and its officers, agents, representatives and employees, cease and desist and the respondents, Jacob Beeber, trading as J. Beeber Co.; Cochrane Physicians' Supplies, Inc.; Margaret A. Dougherty, trading as James T. Dougherty Medical Center; F. Eissner & Co., Inc.; Meyer A. Feinberg; Eugenie Siegel, trading as Fordham Surgical Store; Harry M. Falk, trading as Guarantee Truss Company; Harold Surgical Corporation; Raymond Kramer; Rose Kramer, trading as Kramer Surgical Stores; Samuel G. Krebs, trading as S. G. Krebs Company; N. S. Low, Inc.; Low Surgical Co., Inc.; Manhattan Surgical Instrument Company; T. H. McKenna, Inc.; F. L. Noble Co., Inc.; M. B. Picker Corporation; George Thiemann & Company; Thiemann, Boettcher & Co., Inc.; United Surgical Supplies Corp.; Werner Surgical Supplies, Inc.; Wregg, Inc.; Robert Horwitz, trading as Bedford Surgical Co.; Meyer Palinsky and Ellis Palinsky, trading as Brill Surgical Instrument Co.; Cornell

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Laboratories, Inc.; Charles C. Edinger, trading as Charles C. Edinger Company; Anthony J. Jamison, trading as Jamison Laboratories; the John C. Lindsay Company, a corporation trading as Lindsay Laboratories; Bernard S. Cohen, Irving M. Cohen and Leo Cohen, copartners, trading as Long Island Surgical Supply Co.; Modern Hospital Supply Co., Inc.; National Surgical Stores, Inc.; Park Surgical Co., Inc.; Powell Surgical Co.; Roberts & Quinn, Inc.; Charles Kazdin, trading as Unity Surgical Supply Co.; Lester Van Wagner, trading as Van Wagner & Co.; West End Surgical Co., Inc.; Benjamin Weisberg, trading as White Surgical Company; George J. Young, Inc.; Amsterdam Bros.; Morris Minsky and Robert Caverly, copartners, trading as Bellevue Surgical Supply Company; Cosmevo Surgical Supply Company; Livezey Surgical Supply, Inc.; Medical Service Co., Inc.; New Jersey Medical Supply Co., Inc.; Service Surgical Supply Co., Inc.; Frank Scharfenberger, trading as Scharfenberger's and William R. Walsh, trading as William R. Walsh Company, jointly and severally as members of said Metropolitan Surgical Instrument Council, Inc., their agents, employees and representatives in connection with the sale and the advertising and offering for sale of surgical instruments and appliances in interstate commerce, do cease and desist from:

(1) Combining or uniting to fix and establish uniform prices at which members of respondent association or others should sell such products;

(2) Printing and publishing lists containing the names of dealer members of said Association, so as to include in said lists only so-called regular or "recognized" dealers, distributors, and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "non-recognized" dealers, distributors and wholesalers of said products, and supplying said lists to manufacturers of surgical instruments and appliances;

(3) Maintaining coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers and others to induce and require them to refrain from selling said products to other dealers, distributors and wholesalers who are not members of said association;

(4) Procuring the adherence of members of said association to a schedule of prices agreed upon, by a system of fines exacted from members making sales of said commodities at prices less than those set out in said schedules.

It is further ordered, That the complaint against the individual respondents, Ben Gordon, Oscar Cochran, John C. Lindsey, C. Invedinato, Edward Low, Anthony J. Jamison, H. S. Nussbaum, Na-

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than S. Low, Victor W. Filler, Benjamin J. Perlstein, E. G. Pfarre, S. B. Amsterdam, George Dornhaefer, George J. Young, Maurice F. Powell and Robert Horwitz, be and the same hereby is dismissed for the reason that the order against the trade respondents, their owners, officers, employees, and agents, adequately and effectively restores free and open competition between and among all of the respondents engaged in selling surgical instruments and appliances in interstate commerce.

It is further ordered, That the complaint against Samuel Wasserman, an individual trading under the firm name and style of City Surgical Company, be and the same hereby is dismissed, it appearing that this respondent did not take membership nor participate in any activities of the Metropolitan Surgical Instrument Council, Inc.

It is further ordered, That the complaint against Barney B. Rifkin be and the same hereby is dismissed, it appearing that this respondent retired from business in the month of December 1934, and did not participate in the activities of the Metropolitan Surgical Instrument Council, Inc.

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

Syllabus

IN THE MATTER OF
WILSON CHEMICAL 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 2874. Complaint, July 11, 1936—Decision, Aug. 24, 1936

Where a corporation engaged in sale and distribution of salves and miscellaneous merchandise premiums to purchasers through "return or remit" plan, under which it advertises for agents in newspapers and periodicals and furnishes same with boxes of its said salve, with allowance of thirty days for sale thereof and remittance of portion of proceeds agreed on, or return of unsold merchandise, and under which no deposit is required and products remain its property until paid for, and "agent" may either remit stated sum of amount collected after deducting his commission, or entire amount and receive a premium for his services, or entire proceeds with additional stated sums in payment for premium offered by it in its catalog sent to its said agents—

- (a) Represented in its advertising that, through sale of a specified number of boxes, certain depicted or described premiums, such as express wagons, radios, air rifles, and other merchandise, might be obtained, through such statements as "STREAMLINE 1935 Model WAGON * * * Electric Headlights, Lifelong Lubrication, Instrument Board, * * * America's Greatest Coaster Wagon. IT'S REALLY A WHIZ! Simply give away FREE 12 beautiful pictures with 12 boxes of our famous WHITE CLOVERINE SALVE * * * which you sell to friends at 25¢ a box (with picture FREE) and remit us as per big premium plan book * * *", and other similar statements informing the prospective agent that by selling a certain specified number of boxes he might obtain a guitar or movie machine or rifle or other articles;

Facts being that representations as to number of boxes required to be sold and amount of money required to be remitted for premiums were false, misleading and untrue, in that various sums of cash were required in addition to cash remittance realized by sale of salve as advertised, and in some instances sale of additional boxes was demanded, with remission of the additional money acquired by selling same; and

- (b) Called for additional sums, in almost every case in which a premium was selected, to cover cost of postage or freight thereon, of which facts or conditions it did not advise prospective agents in its advertising matter, but deferred giving notice thereof to the sending of its catalog to those agents making inquiry in response to such advertising;

With tendency to confuse, mislead, and deceive members of the public into belief that, upon making sales of specified amounts of its said salve, the various premiums advertised as a reward therefor would be received unconditionally, when such was not the case, and to induce members of the public to answer its advertisements and sell its said products, as above set

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forth, and with effect of thereby unfairly diverting trade to it from competitors engaged in the sale of merchandise under return or remit plans which do not misrepresent the same or the conditions upon which sales are made, and of causing substantial injury to competition in commerce: *Held*, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. George Foulkes 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 Wilson Chemical Company, Inc., a corporation hereinafter referred to as respondent, has been and is now 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, Wilson Chemical Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located in the city of Tyrone, in the State of Pennsylvania. Respondent is now and for more than one year last past, has been engaged in the business of distributing and selling salves and miscellaneous merchandise designated by respondent as "premiums" which respondent distributes to purchasers, many of whom reside in States other than the State of Pennsylvania, and when orders are received therefor, they are filled by respondent by shipping said salve and miscellaneous merchandise to purchasers from said city of Tyrone, Pa., into and through other States of the United States and the District of Columbia, and there is now and has been during the time hereinabove mentioned, a constant current of trade and commerce in said salve and miscellaneous merchandise so sold and distributed by the respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, said respondent has been and is in substantial competition with other corporations, individuals, firms, and partnerships, likewise engaged in the sale and distribution of salves and miscellaneous merchandise between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of its business, respondent uses what is commonly known as the "return or remit" plan, that is to say, respondent advertises in newspapers, magazines, and periodicals for selling agents to sell its merchandise, furnishes them with boxes of salve to sell, and allows them thirty (30) days to sell the same and either remit the portion of the proceeds of sale agreed upon, or return the unsold merchandise. No deposit is required and the salve and merchandise remain the property of respondent until paid for. The agent may remit the stated sum of the amount collected, keeping the rest as his commission; may remit the entire sum collected, receiving a premium for his services; or may remit the entire proceeds of sale with additional stated sums of money in payment for premiums offered by respondent in its catalogue which is sent its said agents.

PAR. 3. In the course of the operation of said business and for the purpose of inducing the purchase of said salve and miscellaneous merchandise, respondent has caused representations to be made in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States. Said advertising is variously devised to show pictorial representations of express wagons, radios, air rifles, and other merchandise and contains statements and representations such as the following:

STREAMLINE

1935
 Model WAGON
 Or Choice of Cash Commission
 Send No Money—Mail Coupon!
 Has Roll Top—Big Hub Caps
 15 x 33 x 5 Body

Electric Headlights G
 Lifelong Lubrication I
 Instrument Board V
SEND E
NOW N

* * * * *

America's
 Greatest
 Coaster Wagon
IT'S REALLY A WHIIZ!

—Simply give away **FREE 12**
 beautiful pictures with **12**
 boxes of our famous **WHITE**
CLOVERINE SALVE, used for chaps,
 burns, sores, etc., which you sell to
 friends at **25¢** a box (with picture **FREE**)
 and remit us as per big premium plan book.
 Salve easy to sell. Big profit to regular
 agent. We have better things ahead for you.
 Be first.

MAIL COUPON NOW!

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All of said representations together with many similar representations appearing in respondent's advertising, inform prospective selling agents that by selling a certain specified number of boxes (usually 12) of respondent's salve, that such salesmen may obtain as a premium either (1) a guitar, or (2) a movie machine, or (3) a rifle, or (4) a coaster wagon, or (5) a telescope, or (6) a wrist watch.

PAR. 4. The representations made by respondent in its said advertisements with respect to the number of boxes of salve agents must sell and the amount of money such selling agents must remit to respondent for premiums, are false, misleading, and untrue. In truth and in fact, all of the premiums set forth in paragraph 3 hereof advertised by respondent to be obtainable by their selling agents on completing sales of a specified number of packages of salve are only obtainable by such selling agents upon the payment of various sums in cash, in addition to the cash remittances realized upon the sale of such salve, or upon the sale of additional packages of salve and the remittance of the additional money acquired by the selling agents by selling the same, and in many cases, additional cash sums are required by respondent of its selling agents, to cover the cost of postage or freight of said premiums. In truth and in fact, said guitar, movie machine, rifle, coaster wagon, telescope, and wrist watch cannot be obtained by selling agents from respondent by selling the number of packages of respondent's salve which it has specified in its advertisements.

PAR. 5. The representations of respondent as aforesaid have had and do have a tendency to confuse, mislead, and deceive members of the public into the belief that upon making sales of specified amounts of respondent's salve, the various premiums advertised as a reward therefor, will be received unconditionally when in truth and in fact such is not the case. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to answer respondent's advertisements and sell respondent's salve as above set forth thereby unfairly diverting trade to respondent from competitors engaged in the sale of merchandise upon "return or remit" plans, which plans do not misrepresent the plans or conditions upon which such sales are made. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent 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 provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on July 11, 1936 served its complaint in this proceeding upon the respondent, Wilson Chemical Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondent answered, admitting all the material allegations of the complaint to be true, and waiving all further and intervening procedure.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Wilson Chemical Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Tyrone in the State of Pennsylvania. For more than one year last past respondent has been engaged in the business of selling and distributing salves and miscellaneous merchandise to purchasers, many of whom reside in States other than the State of Pennsylvania. Said miscellaneous merchandise is designated by respondent as "premiums". When orders are received for said salves and miscellaneous merchandise they are filled by respondent by shipping said products to purchasers from said city of Tyrone, Pa., into and through other States of the United States and in the District of Columbia.

There is now and has been for more than one year last past a constant current of trade and commerce in said salve and miscellaneous merchandise so sold and distributed by the respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent has been and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of salves and miscellaneous merchandise between and

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among the various States of the United States and in the District of Columbia.

PAR. 2. In the sale of its salves and miscellaneous merchandise, respondent uses what is commonly known as the "return or remit" plan. Under this plan respondent advertises in newspapers, magazines, and periodicals for selling agents to sell its merchandise, furnishes them with boxes of salve to sell, and allows them thirty (30) days to sell the same and either remit the portion of the proceeds agreed upon or return the unsold merchandise. No deposit is required and the salve and merchandise remain the property of respondent until paid for. The person designated by respondent as an "agent" may remit the stated sum of the amount collected keeping the rest as his commission; may remit the entire amount collected, receiving a premium for his services; or may remit the entire proceeds of sales with additional stated sums of money in payment for premiums offered by respondent in its catalog which is sent its said agents.

PAR. 3. In the course of the operation of said business and for the purpose of inducing the purchase of said salves and miscellaneous merchandise respondent has inserted ads in newspapers, magazines, circulars, and various other advertising media which respondent circulates throughout the United States.

This advertising is variously devised to show pictorial representations of express wagons, radios, air rifles, and other merchandise, and contains statements and representations such as the following:

STREAMLINE

1935	Electric Headlights	G
Model WAGON	Lifelong Lubrication	I
Or Choice of Cash Commission	Instrument Board	V
Send No Money—Mail Coupon!	SEND	E
Has Roll Top—Big Hub Caps	NOW	N
15x33x5 Body		

* * * * *

America's
Greatest

Coaster Wagon

IT'S REALLY A WHIZ!

—Simply give away FREE 12
beautiful pictures with 12
boxes of our famous WHITE

CLOVERINE SALVE, used for chaps,
burns, sores, etc., which you sell to friends
at 25¢ a box (with picture FREE) and remit us
as per big premium plan book. Salve easy to
sell. Big profit to regular agent. We have
better things ahead for you. Be first.

MAIL COUPON NOW!

Many other similar representations are made by respondent in its advertising, among which are statements that inform prospective selling agents that by selling a certain specified number of boxes (usually 12) of respondent's salve that such salesman may obtain as a premium either (1) a guitar, or (2) a movie machine, or (3) a rifle, or (4) a coaster wagon, or (5) a telescope, or (6) a wrist watch.

PAR. 4. The representations made by respondent in its said advertisements as set forth in paragraph 3 hereof with respect to the number of boxes of salve agents must sell and the amount of money such selling agents must remit to respondent for premiums are false, misleading, and untrue.

In fact, in order to obtain either the guitar, movie machine, rifle, coaster wagon, telescope, or wrist watch, which are advertised by respondent to be obtainable by their selling agents on completing sales of twelve (12) packages of salve, are only obtainable by such selling agents upon the payment of various sums of cash in addition to the cash remittance realized upon the sale of such salve.

In some instances respondent requires its said selling agents, in order to obtain some of the premiums above enumerated, to sell additional packages of salve and to remit the additional money acquired by selling the same.

In almost every case where a selling agent selects a premium respondent requires said selling agent to remit additional cash sums in order to cover the cost of postage or freight of said premiums. Respondent does not set forth in its advertising matter the fact that respondent requires additional sums to cover postage and freight, but sends a catalog to its selling agents after said agents answer respondent's advertisement informing said agents that this additional amount of money will be required of them.

PAR. 5. Each and all of the misleading statements and representations made by respondent in advertising for agents to sell its salve and miscellaneous merchandise, as hereinabove set forth, had and do have a tendency to confuse, mislead, and deceive members of the public into the belief that upon making sales of specified amounts of respondent's salve, the various premiums advertised as a reward therefor will be received unconditionally, when in truth and in fact such is not the case.

Said representations of respondent have had and do have a tendency and capacity to induce members of the public to answer respondent's advertisements and sell respondent's salve as above set forth, thereby unfairly diverting trade to respondent from competitors engaged in the sale of merchandise upon the "return or remit" plans, which plans do not misrepresent the plans or conditions upon

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which such sales are made. As a direct result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint filed herein on July 11, 1936, and the answer of the respondent Wilson Chemical Company, Inc., received by the Commission on August 7, 1936, which said answer the respondent requests be substituted in lieu of answer filed herein on July 16, 1936, in which answer said respondent admits all the material allegations in the complaint to be true, and waives all further proceedings herein, 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 request of respondent that it be permitted to withdraw its said answer to the complaint herein, filed July 16, 1936, and to substitute in lieu thereof respondent's said answer received by the Commission on August 7, 1936, be and the same is hereby granted.

It is further ordered, That respondent, Wilson Chemical Company, Inc., a corporation, its agents, servants, representatives, and employees, in connection with the sale, or offering for sale, in interstate commerce of salves and miscellaneous merchandise designated by it as "premiums", forthwith cease and desist from:

Representing, directly or by inference, through testimonials, contracts, advertisements, or through any other means whatever,

1. That a premium is obtainable for a less amount in either services or money than is actually the case;

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2. That any premium will be sent upon the remittance of a stated amount without mention of an additional sum to cover postage or packing in cases where this extra remittance is required.

It is further ordered, That the respondent, Wilson Chemical Company, Inc., a corporation, shall within 30 days from the date of service upon it of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which it is complying and has complied with the order herein set forth.

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IN THE MATTER OF

RICHARD R. SOBERANES, TRADING AS TARZANA
MINERAL WATER COMPANY

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

Docket 2804. Complaint, May 15, 1936—Decision, Aug. 25, 1936

Where an individual engaged in sale and distribution of a purported mineral water—

- (a) Represented in radio broadcasts and in circulars, leaflets, and booklets that said water would prevent and cure or was beneficial in treatment of many diseases and afflictions and conditions which might be present in the body, including rheumatism, neuritis, arthritis, high blood pressure, and many others; and
- (b) Represented and implied, through radio broadcasts and by circulars, etc., as aforesaid, that diet of average American citizen was "sadly" deficient in important mineral elements, including sodium, calcium, and magnesium, and that such deficiency could be supplied through drinking said water;

Facts being said water would neither prevent nor cure said ailments and conditions, and was not beneficial in treatment of any, diet referred to was not thus deficient, and such a deficiency would not be supplied through using said water, which acted on body in no different manner than any pure, potable water, and contained no elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any such water;

With effect of misleading and deceiving a substantial portion of prospective purchasers desirous of buying or obtaining a remedy or treatment to prevent and cure, or be beneficial in treatment of such ailments and conditions, and who believed their diet deficient as aforesaid, and wished to supply from other than usual sources of diet elements thus thought deficient, and of causing many prospective purchasers to believe such false representations and implications to be true, and a substantial portion of such purchasers, by reason thereof, to buy said water, and of diverting thereby trade to him from competitors dealing in mineral water and other products used and useful for same purposes for which his said water was advertised and recommended by him; to the substantial injury of such competitors in commerce, and to the injury of the public:

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

Mr. Edw. W. Thomerson for the Commission.

Mr. Clinton F. Seccombe, of Hollywood, Calif., for respondent.

COMPLAINT

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

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Richard R. Soberanes, trading as Tarzana Mineral Water Company, hereinafter referred to as the 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 Richard R. Soberanes is an individual trading under the name and style of Tarzana Mineral Water Company, with his main office and place of business at 1485 North Vine Street in the city of Hollywood, State of California, and with a branch office and place of business at Tarzana, Calif.

The respondent is now, and has been for several years last past, engaged in the sale and distribution of a purported mineral water for human consumption, and causes said water, when sold, to be transported from his said places of business in the State of California into and across the several States of the United States to the purchasers thereof located at various points in the said several States other than in the State of California.

In the course and conduct of his business as aforesaid, the respondent has been and is in substantial competition in commerce between and among the several States of the United States with corporations, associations, partnerships, and other individuals, who truthfully advertise their products, engaged in said commerce in the sale and distribution of mineral water and other products used and useful for the same purposes for which the respondent advertises and recommends his said water.

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, advertises his said water by radio broadcasts, during which statements and representations are made concerning the mineral elements in, and the curative qualities of, said water, and by circulating and distributing among prospective purchasers of said water circulars, leaflets, and booklets wherein similar statements are made concerning said water. In said radio broadcasts and in said circulars, leaflets, and booklets, respondent falsely represents and implies that said water will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and in said circulars, leaflets, and booklets as diseases, ailments, afflictions, and conditions which his said water will prevent and cure, or is beneficial in the

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treatment of, are the following: Rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth.

In truth and in fact, the use of respondent's said water will not prevent and cure, nor is it beneficial in the treatment of, all, or any of, the diseases, ailments, afflictions, and conditions above set out.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid, through said radio broadcasts and by circulars, leaflets, and booklets, falsely represents and implies that the diet of the average American citizen is "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and that this deficiency can be supplied through the drinking of respondent's said water.

In truth and in fact, the diet of the average American citizen is not "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and if it were deficient in these minerals, this deficiency would not be supplied by using respondent's said water, for it does not act on the human body in any different manner than does any pure, potable water, nor does it contain any elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water.

PAR. 4. Many prospective purchasers of respondent's said water located in the said several States of the United States desire to purchase or obtain a remedy or treatment that will prevent and cure, or is beneficial in the treatment of, the diseases, ailments, afflictions, and conditions about which the respondent has made and does make the representations and implications as hereinabove alleged, and many of such prospective purchasers believe that their diet is deficient in important mineral elements—such as sodium, calcium, and magnesium—and desire to supply, from sources other than their regular diet, the mineral elements thought to be deficient.

PAR. 5. The acts, practices, and methods of the respondent, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of said prospective purchasers, and have caused and do cause such prospective purchasers erroneously to believe that the said false representations and implications made by the respondent are true and that respondent's said water will prevent and cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions and that it will supply important mineral elements thought by many to be

deficient in their diet, and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondent's said water, thereby diverting trade to the respondent from his competitors who do not use the acts, practices, and methods used by the respondent, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 6. The acts, practices, and methods of the respondent, as hereinabove alleged, are all to the prejudice of the public and the respondent's said 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, on May 15, 1936, issued and served its complaint in this proceeding upon respondent Richard R. Soberanes, trading as Tarzana Mineral Water Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint the respondent filed his answer herein. In said answer he admits all of the material allegations of the complaint to be true and states that he does not wish to contest the proceeding. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Richard R. Soberanes is an individual trading under the name and style of Tarzana Mineral Water Company, with his main office and place of business at 1485 North Vine Street, in the city of Hollywood, State of California, and with a branch office and place of business at Tarzana, Calif.

The respondent is now, and has been for several years last past, engaged in the sale and distribution of a purported mineral water, under the trade name of Tarzana Mineral Water, for human consumption, and causes said water, when sold, to be transported from

his said place of business in the State of California into and across the several States of the United States to the purchasers thereof located at various points in the said several States other than in the State of California.

The respondent has been and is in substantial competition in interstate commerce with corporations, associations, partnerships, and other individuals, engaged in the sale and distribution of mineral water and other products used and useful for the same purposes for which the respondent advertises and recommends his said water. Among the competitors of the respondent in said commerce are many who truthfully represent their products.

PAR. 2. Respondent advertises his said water by radio broadcasts, during which statements and representations are made concerning the mineral elements in, and the curative qualities of, said water, and by circulating and distributing among prospective purchasers of said water circulars, leaflets, and booklets wherein similar statements are made concerning said water. In said radio broadcasts and in said circulars, leaflets, and booklets, respondent represents and implies that said water will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and in said circulars, leaflets, and booklets as diseases, ailments, afflictions, and conditions which his said water will prevent and cure, or is beneficial in the treatment of, are the following: Rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments, and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth.

In truth and in fact, the use of respondent's said water will not prevent and cure, nor is it beneficial in the treatment of, all or any of, the diseases, ailments, afflictions, and conditions above set out.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid, through said radio broadcasts and by circulars, leaflets, and booklets, represents and implies that the diet of the average American citizen is "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and that this deficiency can be supplied through the drinking of respondent's said water.

In truth and in fact, the diet of the average American citizen is not "sadly" deficient in important mineral elements—such as sodium,

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calcium, and magnesium—and if it were deficient in these minerals, this deficiency would not be supplied by using respondent's said water, for it does not act on the human body in any different manner than does any pure, potable water, nor does it contain any elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water.

PAR. 4. Many prospective purchasers of respondent's said water located in the said several States of the United States desire to purchase or obtain a remedy or treatment that will prevent and cure, or is beneficial in the treatment of, the diseases, ailments, afflictions, and conditions about which the respondent has made and does make the representations and implications as hereinabove set out, and many of such prospective purchasers believe that their diet is deficient in important mineral elements—such as sodium, calcium, and magnesium—and desire to supply, from sources other than their regular diet, the mineral elements thought to be deficient.

PAR. 5. The acts and practices of the respondent, as above set out, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of said prospective purchasers, and have caused and do cause many prospective purchasers erroneously to believe that the said false representations and implications made by the respondent are true and that respondent's said water will prevent and cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions and that it will supply important mineral elements thought by many to be deficient in their diet, and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondent's said water, thereby diverting trade to the respondent from his competitors who truthfully represent their products, to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint filed herein on May 15, 1936, and the answer of the re-

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spondent, Richard R. Soberanes, trading as Tarzana Mineral Water Company, filed on August 12, 1936, in which answer the respondent admits all the material allegations of the complaint to be true, and waives all further proceedings herein, 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 Richard R. Soberanes, in connection with the offering for sale and sale of mineral water, now known and sold as Tarzana Mineral Water, in commerce between and among the several States of the United States and in the District of Columbia, cease and desist from representing, directly or indirectly, that:

(1) Said water will prevent and cure, or is beneficial in the treatment of, the following diseases, ailments, afflictions, and conditions: rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments, and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth;

(2) The diet of the average American citizen is deficient in minerals—such as sodium, calcium and magnesium;

(3) The drinking of said water will supply the body with minerals where there is mineral deficiency in the diet;

(4) Said water contains mineral elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water;

(5) Said water acts on the human body in any different manner than does any pure, potable water.

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

Syllabus

IN THE MATTER OF
AMERICAN TAP BUSH COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2384. Complaint, May 9, 1935—Decision, Aug. 27, 1936*

Where a corporation dealing in the widely and favorably known "Peerless", formerly patented system for tapping beer kegs, and in selling such system or assembly, parts of which were of nickel-plated brass, insofar as they could possibly contact beverage, in competition with less costly "De-Luxe" tap, which, but for nickel-plated zinc "T" portion, was duplicate thereof, through salesmen who solicited jobbers and wholesalers of beer dispensing equipment, and breweries, in direct and substantial competition with those of said competitor throughout the United States—

Placed in said salesmen's hands report of results of test made, at its instance, of said competitor's nickel-plated zinc taps, with respect to effect thereof in souring and spoiling the beverage and absorption of zinc, to effect that such acidity was noticeably accelerated where, as in said tap, zinc base die cast metal came in contact therewith, and that such metal had a decided, harmful effect thereon, and instructed said salesmen to use such report in explaining to customers and prospective customers effect of said competitive product;

Facts being neither tap was directly in the beverage, nor did beer flow directly through any part thereof, and only direct contact therewith was temporary and immediately after insertion of rod in a completely filled keg, and action by laboratory in removing protective nickel-plated coating from inner portion of tap and exposing said zinc base metal directly to beer used in test made same neither fair nor accurate as respects effect of use of said competitive product in dispensing the beverage, and report based thereon was untrue and inaccurate insofar as concerned conditions found in the actual dispensing of beer by it;

With result that said salesmen orally falsely represented to many customers and prospective customers of such competitor that said test was made under conditions fairly representative of actual, normal use, and said tap was harmful and dangerous to use in dispensing the beverage, due to increasing acidity thereof to such extent and causing deposit therein in such quantity as to render same injurious to customer's health and not fit for human consumption, and that such increase in acidity and such deposit could be avoided through use of "Peerless", and a substantial portion of purchasers and prospective purchasers of said competitive product believed such false representations, statements and report to be true, and result of fair and accurate test, and many thereof, by reason of such erroneous belief, ceased or declined to purchase nickel-plated zinc taps of type made by said competitor and purchased, instead, taps sold and distributed by it, to the substantial injury of competitors and to injury of public:

Complaint

23 F. T. C.

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Carey, Armstrong, Weadock & Essery, of Detroit, Mich., 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 American Tap Bush 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 it appearing to said Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Delaware with its principal office and place of business in the city of Detroit, State of Michigan. Respondent is now, and has been for the several years last past, engaged in the manufacture, sale, and distribution of beer taps. Respondent has been and is engaged in offering for sale and selling its said product in commerce between and among the several States of the United States and the District of Columbia, and in causing its said product, when so sold, to be transported from its said principal place of business in the city of Detroit, State of Michigan, to purchasers thereof located in said State and into and across the several States of the United States and the District of Columbia to purchasers thereof located in the District of Columbia and at various points in the said several States of the United States other than the State of Michigan. In the course and conduct of its business, respondent is in substantial competition with other corporations and partnerships, firms, and individuals engaged in the manufacture of beer taps and who offer for sale and sell such products to purchasers located at various points in the several States of the United States and in the District of Columbia, and who cause their said products, when so sold, to be transported into and across the several States of the United States and the District of Columbia, to said purchasers thereof at said various points in the United States other than in the State where such transportation originated.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, has defamed and disparaged, and does defame and disparage, its competitors' products by falsely representing to purchasers and prospective purchasers of such competitors' products that beer taps manufactured by such competitors and sold in competition with respondent's said product, as above alleged, and which are composed chiefly of zinc which has been nickel-plated, are harmful and dangerous to use in dispensing beer because the use of such taps increases the acidity of the beer to such an extent and causes a zinc deposit in such beer in such a quantity as to render such beer injurious to the health of customers consuming the same.

PAR. 3. Respondent does not manufacture a beer tap of the type described in paragraph 2 hereof, but it has competitors who do manufacture that type of beer tap and respondent has made and does make the representations above alleged to purchasers and prospective purchasers of its competitors who manufacture said type of beer tap for the purpose of causing purchasers to discontinue purchasing said type of beer tap and to deter prospective purchasers from purchasing said type of beer tap from said competitors and for the purpose of causing said purchasers and prospective purchasers of said competitors to buy its product in lieu and instead of the said type of beer tap manufactured by its competitors.

PAR. 4. That aforesaid false statements so made by the respondent in the sale of its product have the tendency and capacity to mislead and deceive, and do mislead and deceive purchasers and prospective purchasers of its competitors into the false and erroneous belief that said statements are true, and that said type of beer tap is undesirable, harmful, and dangerous for use in the dispensing of beer as stated by the respondent, thereby causing a substantial portion of such purchasers and prospective purchasers of said competitors' products to discontinue or refrain from the making of such purchases from said competitors, causing such purchasers and prospective purchasers to purchase respondent's product in lieu and instead of the products of its competitors. As a consequence thereof trade is diverted to respondent from its competitors who do not defame and disparage the products of others and thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The above acts and practices of respondent are all to the prejudice of the public and of respondent's said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of 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 May 9, 1935, issued and served its complaint in this proceeding upon the respondent American Tap Bush Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, the respondent entered into a stipulation as to the facts, which was duly signed and executed by counsel for the respondent and W. T. Kelley, chief counsel for the Commission, subject to the approval of the Commission, wherein and whereby it agreed that the statement of facts in said stipulation may be taken as the facts in this proceeding and in lieu of testimony in support of, or in opposition to, the charges in the complaint, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order without the presentation of argument or the filing of briefs. Thereafter, the Commission having accepted and approved said stipulation, the proceeding regularly coming on for final hearing before the Commission on the said complaint, the answer thereto, and said stipulation, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation, organized and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Detroit, State of Michigan, and is now and has been for the past several years engaged in the business of selling and distributing, among other products used in dispensing beer, beer taps, and bushes. Respondent sells its taps and bushes in interstate commerce and makes sales in practically all of the States of the United States, and when sales are made the respondent causes its beer taps and bushes to be transported from its place of business in Detroit, Mich., to the purchaser thereof.

Many other corporations and many partnerships and individuals are engaged in the business of selling and distributing beer taps and bushes in commerce between and among the several States of the United States, and the respondent is in direct and substantial competition with such corporations, partnerships, and individuals in said commerce.

PAR. 2. Respondent, prior to the year 1934, perfected a system for tapping kegs containing beer, which is sold under the trade name, "Peerless". This system is widely and favorably known. It includes a bush, with an opening in the center which is built in or placed in the head of the keg prior to the time it is filled with beer. After the keg is filled with beer, a cork is placed in the opening in the bush. The bush has a sunken top, fitted with slots to which can be securely attached the tap, through which a rod can be inserted, the cork pushed in, and the contents drawn off through the rod. All portions of the bush, tap, and rod that can possibly come in contact with the beer are made of brass which is nickel plated. This includes that portion of the tap immediately surrounding the rod commonly referred to as the "T", which has attached thereto an inlet through which air is forced into the keg which causes the beer to flow therefrom through said rod.

PAR. 3. For a number of years the Peerless system of tapping kegs containing beer was protected by patents, and competitors were not able to market an exact duplicate of this system; but these patents expired prior to the fall of the year 1933, and subsequently duplicates of the tap, both as to design and as to the materials from which made, appeared on the market. One competitor of the respondent, the DeLuxe Manufacturing Company, a Michigan corporation with its principal place of business in Detroit, Mich., in the latter part of the year 1933, began to distribute a duplicate of the Peerless tap under the trade name "DeLuxe". The only difference in the DeLuxe tap and the Peerless tap of the respondent, either in design or materials from which made, is that the "T" portion of the DeLuxe tap is made of zinc which is nickel plated, while that of the respondent is made of brass which is nickel plated. The use of zinc metal instead of brass metal for the "T" portion of the tap makes the manufacturing cost less, for the "T" portion of the DeLuxe tap can be manufactured through what is known as the die cast method, while this is not possible with the brass. The respondent and the manufacturer of the DeLuxe tap market their said products principally through salesmen, who call on jobbers and wholesalers of beer dispensing equipment and on breweries. They are in direct and substantial competition with each other for trade throughout the United States, in

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many instances supplying the same jobbers, wholesalers, and breweries.

No part of either the Peerless or the DeLuxe tap is directly in the beer, nor does beer flow directly through any part of the tap, and the only contact that the tap has directly with the beer is immediately after the insertion of the rod, when, if the keg is completely filled, the beer displaced by the insertion of the rod, which usually extends to the bottom of the keg, might be forced up around the rod and come in contact with the inside portion of the "T". No beer would remain there because the tap is usually higher than the keg and the air, under pressure, which is applied immediately after tapping, comes in between the outside of the rod and the inside of the "T" portion of the tap and forces the beer out.

PAR. 4. The respondent, in June 1934, submitted to the Detroit Testing Laboratory of Detroit, Mich., one of the DeLuxe Manufacturing Company's die cast nickel plated zinc taps for a test to determine what effect the use of this tap had with reference to the souring and spoiling of beer and to determine the absorption of the zinc by the beer. A report of the results of this test was made on June 20, 1934, by the laboratory to the respondent. In this report it was concluded that the acidity in beer is noticeably accelerated if zinc base die cast metal, the metal used in the DeLuxe tap, is allowed to come in contact with the beer and that the die cast zinc base metal leaves a deposit of zinc in the beer. The opinion was expressed in said report that zinc base die cast metal has a decided harmful effect on the beer with which it comes in contact. The test made by the Detroit Testing Laboratory, on which said report was based, was not a fair and accurate test of the effect of the use of the DeLuxe tap in dispensing beer, and the report based on such test is untrue and inaccurate insofar as representing conditions found in the actual dispensing of beer with the DeLuxe tap are concerned, for, in making the test, the laboratory removed from the inner portion of said tap its protective nickel plated coating and directly exposed said die cast zinc base metal to, and placed the same in, the beer used in making the test. In using said DeLuxe tap in the normal dispensing of beer, the protective coating of nickel plating is not removed, nor is the tap placed in the beer.

Upon the receipt of the above mentioned report of the Detroit Testing Laboratory, the respondent placed copies of the same in the possession of its salesmen, with instructions to use the report in explaining to customers, and prospective customers the effect of using DeLuxe taps, and said salesmen thereafter used said report and exhibited the whole or a part thereof to customers of the DeLuxe Manufacturing Company located in the various States of the United States, represent-

ing that such report was based on a test made under similar conditions to those actually existing when using the DeLuxe tap to draw beer from kegs in the ordinary course of dispensing the same to consumers, and said salesmen made oral representations to many such customers and prospective customers of the DeLuxe Manufacturing Company in connection therewith to the effect that the DeLuxe tap is harmful and dangerous to use in dispensing beer because it increases the acidity thereof to such an extent and causes a zinc deposit therein in such a quantity as to render such beer injurious to the health of customers and not fit for human consumption and represented that by the use of respondent's Peerless tap such increase in acidity and the zinc deposit in said beer could be avoided.

In truth and in fact the said report of the Detroit Testing Laboratory so used by the respondent, is not based on a test made under conditions similar to those actually existing when using the DeLuxe tap to draw beer from kegs in the ordinary course of dispensing beer to customers. The use of the DeLuxe tap does not have a harmful effect on beer; it is not harmful and dangerous to use in dispensing beer; and it does not increase the acidity of beer to such an extent or cause a zinc deposit therein in such a quantity as to render the beer with which said tap is used injurious to the health of the person drinking it.

PAR. 5. Purchasers and prospective purchasers of beer taps desire to purchase a beer tap that will not increase the acidity of beer to such an extent and cause a zinc deposit in beer in such a quantity as to render the beer injurious or harmful to consumers of such beer.

A substantial portion of the purchasers and prospective purchasers of the DeLuxe tap, manufactured by the DeLuxe Manufacturing Company as aforesaid, to whom the aforesaid false representations and statements were made and to whom said laboratory report was exhibited, believed said false representations to be true and said report to be the result of a fair and accurate test, and, because of such erroneous beliefs, many of said purchasers and prospective purchasers, ceased purchasing or declined to purchase beer taps, composed, in part, of zinc which is nickel plated, of the type manufactured by the DeLuxe Manufacturing Company as hereinabove set out, and purchased instead beer taps sold and distributed by the respondent, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to

Order

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint filed herein on May 9, 1935, the answer of the respondent thereto filed May 31, 1935, and a stipulation as to the facts entered into between the respondent and counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of 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 American Tap Bush Company, a corporation, its agents, servants, representatives, and employees, in connection with the offering for sale or sale of beer taps, used in dispensing beer from kegs, in commerce between and among the several States of the United States and in the District of Columbia, forthwith cease and desist from representing, directly or indirectly, that:

1. the use of taps composed wholly or in part of zinc which is nickel plated are harmful and dangerous to use in dispensing beer from kegs, because the use of such taps increases the acidity of the beer to such an extent and causes a zinc deposit therein in such a quantity as to render the beer injurious to the health of consumers;

2. the use of taps composed wholly or in part of zinc which is nickel plated in dispensing beer from kegs causes an increase in the acidity of the beer to such an extent and a zinc deposit therein in such a quantity as to render the beer injurious to the health of consumers.

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

Syllabus

IN THE MATTER OF
 COLONIAL DISTILLING AND DISTRIBUTING
 CORPORATION

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

Docket 2470. Complaint, June 28, 1935—Decision, Aug. 27, 1936

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in making gin by re-distillation of purchased alcohol over juniper berries and other aromatics, and in selling its aforesaid products to wholesalers and retailers in various States and the District of Columbia, in substantial competition with (1) other corporations, individuals, and firms engaged in manufacture by distillation of whiskies, etc., and in sale thereof, and (2) other corporations, etc., engaged in purchasing, rectifying, etc., whiskies, gins, and other spirituous beverages dealt in by them, and in sale thereof as aforesaid, and which, respectively, as manufacturers and distillers from mash, wort, or wash, by process of original and continuous distillation, through continuous closed pipes and vessels until manufacture is complete, as long understood by word "Distilling," truthfully use said word or words "Distillery," "Distilleries," or "Distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their products, or as purchasers, rectifiers, etc., of the whiskies, etc., dealt in by them, do not use such various words as above set forth—

Represented through use of word "Distilling" in its corporate name, printed on its stationery and advertising and on labels attached to bottles in which it sold and shipped its said products, and otherwise, to its customers, and furnished same with means of representing to their retailer-vendees and consuming public, that it was a distiller and that the whiskies, etc., contained as aforesaid, were by it made through process of distillation from mash, wort, or wash, as above set forth, notwithstanding fact it neither owned, operated, nor controlled any place where whiskies and other beverages were made by process of distillation from mash, wort, or wash, and was not a distiller;

With effect of misleading and deceiving dealers and purchasing public in aforesaid respect and into belief that said whiskies, gins, and other spirituous beverages sold by it were made and distilled by it from mash, wort, or wash, as aforesaid, and of inducing dealers and purchasing public, in such beliefs, to buy such whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent themselves as manufacturers by distillation of such products, as above set forth, and with capacity and tendency so to mislead and deceive and induce such purchases; to the substantial injury of substantial competition in commerce:

Complaint

23 F. T. C.

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Alfred D. Van Buren, 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 Colonial Distilling and Distributing 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 the 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 is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending,

and bottling whiskies, gins, and other spiritous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word distilled is commonly accepted and understood by those engaged in the liquor trade and by the public. Respondent does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

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PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling," as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 28, 1935, issued, and on June 29, 1935, served its complaint in this proceeding upon respondent, Colonial Distilling and Distributing Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, respondent applied for permission to withdraw its said answer and file in lieu thereof a substituted answer waiving hearings on the charges set forth in the complaint in this proceeding, stating that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that the Commission might, without further evidence or other intervening procedure, make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations charged in the said complaint; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, in said State. For more than one year prior to January 1, 1935, it was engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it caused its said products when sold to be transported from its place of business as aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent was in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid; respondent was in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling

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whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent had upon its said premises a still which it used in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent was redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent was a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent was not a distiller, does not now and never did distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics did not distill the whiskies, gins and other spirituous beverages by it so bottled, labeled, sold and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and by the public. Respondent does not now and never did own, operate, or control any place or places where such beverages were manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully used the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sold and shipped such products. There were also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who did not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, was calculated to and had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent were manufactured and distilled by it from mash, wort, or wash, as aforesaid, and was calculated to and had the capacity and tendency to and did induce dealers and the purchasing public in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who did not by their corporate or trade names or in any other manner misrepresent that they were manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent did substantial injury to substantial competition in interstate commerce.

The records of the Commissioner of Internal Revenue show no interstate shipments to have been made by this respondent since January 1, 1935. It appears that all the assets of respondent were seized by the Collector of Internal Revenue on August 1, 1935, and later sold on September 13, 1935, to satisfy unpaid taxes, and since that time this concern has not engaged in business. Its corporate charter, however, is still existent and the Commission has no assurance that in the absence of a prohibitive order this respondent may not at some future time renew the violations of law herein charged and admitted to be true by respondent.

PAR. 6. Because of existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29,

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1935 (49 Stat. 977), and which regulations are presently expected to become effective as of August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in interstate commerce, constituting 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission its application that it be permitted to withdraw its said answer and file in lieu thereof, as a substituted answer, the draft of answer annexed to the said application; and the Commission having duly considered the same.

It is hereby ordered, That the said application be and the same is hereby granted; that the said answer be and the same is hereby withdrawn, and that the said substituted answer be and the same is hereby filed in lieu of the answer so withdrawn.

And the said respondent, in and by its said substituted answer, having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that the Commission may, without further evidence or other intervening procedure, make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations of law charged in the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

It is hereby further ordered, That the respondent, Colonial Distilling and Distributing Corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through the use of the work "Distilling" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other spirituous beverages; (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate or control such a place or places.

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

IN THE MATTER OF
FOSTER-MILBURN COMPANY

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

*Docket 2711. Complaint, Feb. 3, 1936—Decision, Aug. 27, 1936*¹

Where a corporation engaged in manufacture and sale of an extensively advertised medicinal, kidney preparation, under designation "Doan's Pills"; in advertising said medicine—

- (a) Represented that having trouble with too frequent bladder passages, with scanty amount causing burning and discomfort, meant that the 15 miles of kidney tubes needed washing out and that such passage might be a danger signal and mean loss of vitality, through statements contained in advertising headed "WASH OUT 15 MILES OF KIDNEY TUBES, Win back pep—vigor—vitality"; and
- (b) Represented that if kidney did not empty three pints every day and get rid of four pounds of waste matter body would take up such poison and cause serious trouble and "may knock you out and lay you up for many months", and that its said preparation would give quick relief and wash out said 15 miles of tubes;

Facts being that backaches, leg pains, and various symptoms described in its said advertisements might not be produced by failure of kidney to excrete a definite volume of urine, but be traced to causes other than diseases of kidney, and statement as to daily excretion was decidedly exaggerated and said tubes cannot be washed out, and medicine at most may cause stimulation of activities thereof, with result that they will be flushed, and claim that said preparation will enable patient to win back pep, vigor, and vitality was likewise exaggerated, since while regular functions of kidney may increase person's well being it will not bring about such conditions in sense understood from said words by average person in everyday life;

With effect of misleading and deceiving purchasing public into belief that said preparation had curative properties as claimed, and was a remedy for or gave relief in diseases and ailments named, without qualification or limitation, and with tendency and capacity so to do, and induce members of public to purchase and use such preparation because of erroneous belief engendered as above set forth, and to divert trade to it from competitors, among whom there are those who in no wise misrepresent therapeutic results of their competing products, and with effect of so diverting, to substantial injury of competitors and that of the public:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Pencke for the Commission.

Denning & Cross, of Washington, D. C., for respondent.

¹ Order published as modified as of Sept. 5, 1936.

Complaint

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 Foster-Milburn Company, a corporation, hereinafter referred to as the respondent, has been, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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. Foster-Milburn Company is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located in the city of Buffalo within said State. Respondent is now, and for more than two years last past has been, engaged in manufacturing, advertising, and selling a medicinal preparation, designated "Doan's Pills" which is represented as "a stimulant diuretic to the kidneys". In the course and conduct of its business respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of New York, into and through various States of the United States and the District of Columbia to the purchasers thereof located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent is now and for more than one year last past has been, in substantial competition with other individuals, partnerships, and firms and with corporations engaged in the business of manufacturing and selling diuretic medicines in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent has made, and is making, false and misleading statements and representations in advertisements inserted in various publications and newspapers published in every State of the United States and the District of Columbia, including "The Lorain Journal and Times-Herald", Lorain, Ohio, issue of September 13, 1934, and otherwise, as follows:

"WASH OUT
15 MILES OF
KIDNEY TUBES

Win back pep—vigor—vitality

Medical authorities agree that your kidneys contain 15 MILES of tiny tubes or filters which help to purify the blood and keep you healthy.

If you have trouble with too frequent bladder passages with scanty amount causing burning and discomfort, the 15 MILES of kidney tubes need washing

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out. This danger signal may be the beginning of nagging backache, leg pains, loss of pep and vitality, getting up nights, lumbago, swollen feet and ankles, rheumatic pains and dizziness.

If kidneys don't empty three pints every day and get rid of four pounds of waste matter, your body will take up these poisons causing serious trouble. It may knock you out and lay you up for many months. Don't wait. Ask your druggist for DOAN'S PILLS. . . . a doctor's prescription which has been used successfully by millions of kidney sufferers for over forty years. They give quick relief and will help to wash out the 15 MILES of kidney tubes.

But don't take chances with strong drugs or so-called "Kidney cures" that claim to fix you up in 15 minutes, for they may seriously injure and irritate delicate tissues. Insist on DOAN'S PILLS the old reliable relief that contains no "Dope" or habit-forming drugs. Be sure to get DOAN'S PILLS at your druggist."

In truth and in fact said statements and representations were and are false and misleading in that said product will not wash out 15 miles of kidney tubes; it will not win back pep, vigor, and vitality; if a person has trouble with too frequent bladder passage with scanty amount, said pills will not relieve or cure such condition; and backache, leg pains, loss of pep and vitality, lumbago, swollen feet and ankles, rheumatic pains, and dizziness are not symptoms of kidney disorders. Said representations are further false and misleading in that they give the impression that said Doan's Pills are a cure for the conditions described, whereas in truth and in fact no diuretic is a cure for kidney troubles, and the symptoms enumerated in said advertisement might not indicate a condition for which a diuretic would be prescribed by a qualified physician. The statement, "don't take chances with strong drugs or so-called 'Kidney cures' that claim to fix you up in fifteen minutes, for they may seriously injure and irritate delicate tissues", contained in said advertisement, is misleading in that it tends to lead the purchaser of said Doan's Pills to believe that said pills contain no injurious or irritating drugs, when in truth and in fact said pills do contain drugs which are irritating to the kidney tissues.

Said statements and representations have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said medicinal preparation, in the erroneous belief that they are true, and that the use of said preparation will accomplish the results set out or indicated in said advertisement.

PAR. 3. In the course and conduct of its business as hereinabove described, respondent is and has been in competition with corporations, partnerships, firms and individuals engaged in the sale and shipment in interstate commerce of medicinal preparations used for the treatment of ailments similar to those for which respondent

recommends its "Doan's Pills", which said competitors do not misrepresent and have not misrepresented the therapeutic effects of said competitive medicinal preparations. As a result of the aforesaid false and misleading statements and representations by the respondent with respect to its product, trade has been unfairly diverted to it from its said competitors, whose ability to successfully compete with respondent has been and is lessened and injured by the methods of respondent hereinabove set forth.

PAR. 4. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 3rd day of February 1936, issued its complaint and on the 5th day of February 1936, caused the same to be served upon the respondent, Foster-Milburn Company, a corporation. Respondents filed answer to the complaint with the Commission on the 25th day of February 1936.

After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by William I. Demming, attorney for the respondent.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer of respondent thereto and the testimony and evidence, briefs and oral arguments of both counsel having been waived; and the Commission having duly considered the same, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Respondent, Foster-Milburn Company, is a corporation organized and existing under the laws of the State of New York, with its office

and principal place of business located in the city of Buffalo within said State. The respondent is engaged in the manufacture and sale of a medicinal preparation designated "Doan's Pills" which is represented as "a stimulant diuretic to the kidneys." The preparation is extensively advertised in newspapers, magazines, and otherwise, throughout the United States. Respondent is in competition with similar concerns manufacturing medicinal preparations which are sold and offered to the public largely through the medium of magazine and newspaper advertising. In advertising said medicine respondent has made certain statements and claims of which the following is an example.

"WASH OUT
15 MILES OF
KIDNEY TUBES

Win back pep—vigor—vitality

Medical authorities agree that your kidneys contain 15 MILES of tiny tubes or filters which help to purify the blood and keep you healthy.

If you have trouble with too frequent bladder passages with scanty amount causing burning and discomfort, the 15 MILES of kidney tubes need washing out. This danger signal may be the beginning of nagging backache, leg pains, loss of pep and vitality, getting up nights, lumbago, swollen feet and ankles, rheumatic pains and dizziness.

If kidneys don't empty three pints every day and get rid of four pounds of waste matter, your body will take up these poisons causing serious trouble. It may knock you out and lay you up for many months. Don't wait. Ask your druggist for DOAN'S PILLS . . . a doctor's prescription . . . which has been used successfully by millions of kidney sufferers for over forty years. They give quick relief and will help to wash out the 15 MILES of kidney tubes.

But don't take chances with strong drugs or so-called "Kidney cures" that claim to fix you up in 15 minutes, for they may seriously injure and irritate delicate tissues. Insist on DOAN'S PILLS . . . the old reliable relief that contains no "Dope" or habit-forming drugs. Be sure to get DOAN'S PILLS at your druggist."

The advertisement quoted in the preceding paragraph is exaggerated and misleading in several respects. The suggestion is conveyed to the reader that backaches, leg pains, and the other symptoms mentioned in the advertisement may be produced by the failure of the kidney to excrete a definite volume of urine containing a definite amount of waste products, and further that a person may suffer seriously if the kidneys do not empty three pints every day and get rid of four pounds of waste matter. The advertisement is headed "WASH OUT 15 MILES OF KIDNEY TUBES, Win back pep—vigor—vitality". The fact is that the several pains and symptoms

described in the advertisement without qualification may not be produced by the failure of the kidney to excrete a definite volume of urine, but may be traced to causes other than to a disease of the kidney. Likewise, the statement as to the quantity to be excreted every day is exaggerated. The volume of urine excreted per day may vary within wide limits, depending on several conditions, the average being about two pints. The advertisement states that the kidneys should get rid of four pounds of waste matter, which is in fact impossible. Waste matter constitutes about five percent of the fluid, so that the statement as to four pounds of waste matter to be excreted is decided an exaggeration, unless it is clearly shown that the whole volume of fluid includes the waste matter. Experiments further show that kidney tubes cannot be washed out. At most a medicine may cause a stimulation of the activities of the kidneys with the result that they will be flushed. The claim that the said "Doan's Pills" will enable the patient to win back pep, vigor, and vitality is likewise exaggerated. While the regular function of the kidney may increase the well-being of a person, it will not bring pep, vigor, and vitality in the sense that these words are understood by the average person in everyday life.

The Commission, therefore, finds that said representations of respondent in regard to the therapeutic effects of said medicinal preparation were exaggerated and misleading and did not truthfully and accurately state the therapeutic effect thereof.

The said representations of respondent as to the therapeutic value of its product, have had the capacity to and did mislead and deceive the purchasing public into the belief that said kidney pills have the curative properties claimed in said advertisements and that they are a remedy for, or will give relief in, the diseases and ailments named in said advertisements without qualification or limitation. Said representations of respondent had the tendency and capacity to induce members of the public to purchase and use said medicinal 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 products similar in kind and as to purposes of use to that of respondent.

There are among the said competitors of respondent in the sale of said medicinal preparations 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.

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While the respondent has modified its advertisements from time to time, conforming to reputable medical opinion, there is no assurance that the practices complained of may not be repeated unless an appropriate order to cease and desist is entered against respondent.

CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, were all to the injury and prejudice of the public and of respondent's competitors, and constituted unfair methods of competition in commerce and were 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."

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and William I. Denning, counsel for the respondent having waived the filing of brief and the Commission having made its findings as to the facts and its conclusion that said 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 on the 27th day of August 1936, having made and issued its order to cease and desist in this proceeding;

Now, upon reconsideration of the aforesaid findings as to the facts, conclusion and order to cease and desist, *It is hereby ordered* that the said order to cease and desist be, and the same is hereby, modified so that, as modified, the aforesaid order to cease and desist shall and does hereby order that the respondent, Foster-Milburn Company, a corporation, its agents, representatives, and employees, in connection with the sale or offering for sale in interstate commerce and in the District of Columbia, of a medicinal preparation designated as "Doan's Pills", or any other pills, compounds or preparations possessing similar properties, do forthwith cease and desist from representing directly or indirectly through advertisements, trade promotion literature or in any other manner whatsoever, that:

¹ Published, as modified, as of Sept. 5, 1936.

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(a) Having trouble with too frequent bladder passages with scanty amount causing burning and discomfort means that the 15 miles of kidney tubes need washing out;

(b) Too frequent bladder passages with scanty amount may be a danger signal and mean the loss of vitality;

(c) If kidneys do not empty three pints every day and get rid of four pounds of waste matter, the body will take up these poisons, causing serious trouble. It may knock you out and lay you up for many months.

(d) "Doan's Pills" give quick relief and will wash out 15 miles of kidney tubes.

Nothing in this order shall be construed as preventing respondent from making proper therapeutical claims or recommendations which are based upon reputable medical opinion or recognized medical or pharmaceutical literature.

And it is further ordered, That said respondent shall, within 30 days from the day of the date of the service upon it of this order, file with this Commission a report in writing stating in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
CAMPBELL'S DISTILLERIES, INC.

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

Docket 2471. Complaint, June 28, 1935—Decision, Aug. 28, 1936

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in selling its aforesaid products to wholesalers and retailers in various States and the District of Columbia, in substantial competition with (1) other corporations, individuals, and firms engaged in manufacture, by true distillation, of whiskies, etc., from mash, wort, or wash, and in sale thereof, and (2) other corporations, etc., engaged in purchasing, rectifying, etc., whiskies, gins, and other spirituous beverages dealt in by them, and in sale thereof as aforesaid, and which, respectively, as manufacturers and distillers from mash, wort, or wash, or owners or operators of places where spirituous liquors are made by process of original distillation from such mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete, as long understood by wholesale and retail liquor trade and ultimate consuming public from word "distilleries," truthfully used said word or words "Distillery," "Distilling," or "Distillers," as part of their corporate or trade names and on their stationery, catalogs, and advertising, and on their labels attached to the bottles in which they sell and ship their products; or as purchasers, rectifiers, etc., of the whiskies, etc., dealt in by them, do not use such various words as above set forth—

Represented through use of word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and on labels attached to the bottles in which it sold and shipped its said products, and otherwise, to its customers and furnished same with means of representing to their retailer-vendees and consuming public that it was a distiller and that the whiskies, etc., contained by it were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it never was a distiller and did not distill said whiskies, etc., nor own, operate, or control any place where spirituous liquors were made by process of original and continuous distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that said whiskies, etc., were made or distilled by it from mash, etc., by one continuous process, and of inducing dealers and purchasing public, in such belief, to buy such whiskies, etc., rectified and bottled by it, and of thereby diverting trade to it from competitors who did not, by their corporate or trade names or in any other manner, misrepresent themselves as distillers, and with capacity and tendency so to mislead and deceive; to the substantial injury of substantial competition in commerce;

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. E. George Aaron, of Camden, N. J., for Phineas H. Wittenberg, receiver for Campbell's Distilleries, Inc.

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 Campbell's Distilleries, 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 the 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 is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Camden, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. For a long period of time the word "Distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalog, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency

to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 28, 1935, issued and on June 29, 1935, served its complaint in this proceeding upon respondent, Campbell's Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by P. B. Morehouse, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it and no testimony or evidence was introduced in opposition thereto; the testimony and evidence in support of the allegations of said complaint were duly recorded and filed in the office of the Commission; thereafter respondent applied for permission to file with the Commission a supplemental and amended answer waiving further hearings on the charges set forth in the complaint in this proceeding, stating that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that the Commission might, without further evidence or other interven-

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ing procedure, make, issue and serve upon the respondent findings as to the facts and an order to cease and desist from the violations charged in the said complaint; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Camden, in said State. For more than one year prior to January 1, 1935, it was engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it caused its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent, at the same time was in substantial competition with other corporations and with individuals, partnerships, and firms then and now engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent was in substantial competition with other corporations and with individuals, firms, and partnerships then and now engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manu-

facture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that the said whiskies, gins, and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported. Respondent does not now and never did own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully used the words "distillery," "distilleries," "distillers" or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising, and on the labels of the bottles in which they sold and shipped such products. There were also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous liquors who did not use the words "distillery," "distilleries," "distilling" or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, were calculated to and had a capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process and were calculated to and had the capacity and tendency to and did induce dealers and the purchasing public, acting

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in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who did not by their corporate or trade names or in any other manner misrepresent that they were distillers, and thereby respondent did substantial injury to substantial competition in interstate commerce.

PAR. 6. Pursuant to an involuntary petition in bankruptcy filed April 25, 1935, in the United States District Court for the District of New Jersey respondent ceased to engage in its aforesaid business sometime in the early part of the year 1935, and in the month of October 1935, its stock on hand, equipment and other assets were sold by receiver and trustee in bankruptcy under the order of that Court. Nothing appears to show that respondent's corporate existence has not been maintained or that in the future it might not, unless prohibited therefrom, again engage in business as a rectifier and resume the acts and practices above described.

CONCLUSION

The aforesaid acts and practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in interstate commerce, constituting 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

The respondent herein having filed its answer to the complaint in this proceeding, which came on to be heard by the Federal Trade Commission upon the complaint of the Commission, the said answer of respondent, testimony and evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it in support of the charges of said complaint; no testimony being offered in opposition thereto and respondent thereafter having applied to the Commission for permission to file as a supplemental amended answer a draft of answer thereupon by it submitted, and the Commission having duly considered the same:

It is hereby ordered, That the said application be and the same is hereby granted, and that the said supplemental amended answer be and the same is hereby filed.

And the said respondent, in and by its said supplemental amended answer having waived further hearings on the charges set forth in

the complaint in this proceeding and having stated therein that it does not desire to contest the same and that it admits all of the material allegations of the complaint to be true, and that the Commission may, without further evidence or other intervening procedure make, issue and serve upon the respondent, findings as to the facts and an order to cease and desist from the violations of law charged in the complaint, 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 hereby further ordered, That the respondent, Campbell's Distilleries, Inc., its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, do cease and desist from:

Representing through the use of the word "Distilleries" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other spirituous beverages; (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

Complaint

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IN THE MATTER OF

CALAFO 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 2508. Complaint, Aug. 6, 1935.—Decision, Aug. 28, 1936*

Where a corporation, engaged in offer and sale, through dealers and directly, of a powder, and of a liquid preparation as remedies for and treatment of asthma and hay fever, through internal application, and through burning the "Inhalettes" or cigarettes and inhalation of vapor or smoke therefrom, respectively; in advertising its said medical preparations through newspapers, radio broadcasts, pamphlets, circulars, and other printed matter enclosed therewith, and through form letters mailed direct to prospective customers—

- (a) Falsely represented and implied that use thereof would cause asthma and hay fever to disappear like magic, and that distressing symptoms thereof would disappear and user of said preparations regain health; and
- (b) Represented and implied that said preparations constituted a competent and effective remedy for treatment of said ailments and were safe for all users and superior to other treatments or remedies therefor;

With effect of misleading and deceiving many persons afflicted with one or both of said diseases into believing that such preparations possessed therapeutic efficacy claimed, and that such various representations were true and of causing such persons, because of said erroneous beliefs, to buy same, and of unfairly and substantially diverting thereby trade to it from competitors who do not misrepresent their products, and with tendency and capacity so to mislead and deceive; to the injury of said competitors and that of public:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Canepa & Castruccio, of Los Angeles, Calif., 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 Calafó Company, Incorporated, 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Calafco Company, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of California, having and maintaining its office and principal place of business at 620 West Olympic Boulevard in the city of Los Angeles in the State of California.

PAR. 2. Respondent has been and is engaged in offering for sale and selling certain medical preparations, which it offers for sale and sells under the several names and designations of "Calafco Liquid", "Mentholated Asthmatic Powder", and "Calafco Mentholated Asthma Inhalettes", respectively. In some instances respondent refers to said last two designated products by the words "Calafco Powder" and "Calafco Inhalettes" respectively, or by other abbreviated titles or names.

Said preparations are put up in containers suitable for shipment to purchasers thereof, and for delivery to and use by consumers thereof. Said remedies are to be used by ultimate purchasers according to directions printed upon said several containers. Said Calafco Liquid is to be taken orally as an internal remedy. Said preparations have been and are being so offered for sale and sold as treatments or remedies for ailments or diseases which are usually known and referred to as asthma and hay fever.

Respondent offers for sale and sells said products to dealers in drugs and medicines for resale to the public and to persons seeking to purchase remedies for the treatment and cure of asthma or hay fever, or both. Respondent, when any of said preparations has been so sold, causes the same to be transported from said city of Los Angeles, in the State of California, into and through the several States of the United States and the District of Columbia to the several purchasers thereof at their respective places of business located in said several States and in the District of Columbia.

PAR. 3. In and throughout the several States of the United States and the District of Columbia, located at various places therein, are many persons who are afflicted with ailments and diseases commonly called and referred to as asthma and hay fever. Such persons have been, and are, seeking some preparation, treatment or remedy by which said ailments or diseases may be certainly, quickly, easily, safely, and permanently relieved and cured; and there is a great public demand for such preparation, treatment, or remedy.

There have been and are other persons, partnerships, associations, and corporations who have been and are engaged in offering for sale

and selling in said commerce between and among the several States of the United States and the District of Columbia, the same, or like or otherwise competitive products, to wit: Preparations, systems, methods, treatments, or remedies for said ailments or diseases. Said other persons, partnerships, associations, and corporations have been and are so engaged in so offering for sale and selling their said products in said commerce in competition with respondent's said products. Respondent has been and is in substantial competition with them all in so offering for sale and selling its said products in said commerce as above alleged. Many other persons, partnerships, associations, and corporations, who are not now actually engaged in offering for sale or selling in said commerce the same, like or otherwise competitive products as preparations, systems, methods, treatments, or remedies for said ailments or diseases, may at any time seek to enter said trade or commerce in like competition with the respondent, and have the lawful right so to do, upon the basis of the use of fair methods of competition by all competitors in said trade or commerce, and unobstructed, impeded or otherwise injured by respondent's use of unfair methods of competition in connection with, or in aid of the sale of its said products.

PAR. 4. Respondent, in aid of so offering for sale and selling its said products in said commerce between and among the several States of the United States and the District of Columbia, has advertised, and does advertise, the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts, in pamphlets, printed testimonials, and other printed matter, and by and through the use of photographs and other pictures, and on labels attached to and in circulars enclosed in or with the boxes, bottles, or containers in which said products are packed or placed when so offered for sale and sold, and by other means. In, by, and through each and all of the advertising media, above enumerated, respondent has, expressly or by necessary implication, made, and makes, each and all of the statements and representations hereinafter set forth and alleged.

PAR. 5. Said products are composed of several ingredients, the formulae thereof being at times printed and published by respondent in said advertisements, or otherwise. Certain of said ingredients are powerful drugs the use of which, as directed in the printed directions which respondent causes to be printed upon said labels or other printed matter aforesaid, is liable to be harmful and injurious to the user thereof. Such ingredients may safely be used only under and pursuant to warnings, directions, and safeguards disclosing such

danger and providing for safe and effective limitations and conditions upon the use thereof.

Respondent does not disclose in its said advertisements, or otherwise, any of the facts above alleged in this paragraph of this complaint, but prints on said labels and other printed matter above referred to general directions for the use of said products by any and all purchasers or users thereof, with no intimation or indication that the same may not be freely used, without conditions, limitations, or other safeguard, by any and all such purchasers and users thereof.

PAR. 6. In, by and through its advertising media above alleged, respondent has made and makes, to the public, to sufferers from said ailments and diseases, and to prospective purchasers, statements and representations as to its said products in substance as follows, to wit:

ASTHMA AND HAY
FEVER DISAPPEAR
LIKE MAGIC!

New Money-Back Remedy Affords
Quick Relief

Calafoliquid relieves the distressing symptoms of Asthma and Hay Fever or money back. No questions—you are the judge. Calafoliquid, a different remedy, promises you relief. You breathe freely—sleep all night—regain health! The distressing symptoms disappear. Don't suffer longer—try Calafoliquid.

CALAFO

Reg. U. S. Pat. Office
Dr. Stemmerman's Formula
Prescribed by him in cases
of

Asthma and Hay Fever
Contains Alcohol 1½%

Opium 9/10 grains in each fluid ounce.
Arsenious Acid 1/10 grain to each 30
minims.

Directions on circular enclosed.
CALAFO COMPANY, Inc.
Los Angeles, California

Here is Important Information: No one should be hasty and impatient; no one should jump at the conclusion that Calafoliquid will not be beneficial just because it does not, in every case, give good results "in a jiffy." Here are some facts that every sufferer from asthma or hay fever should remember: Two kinds of medicine are sometimes (but not in every case) required in the successful treatment of asthma and hay fever. One is Calafoliquid, which acts through the general system via the blood and nerves, the other is Calafoliquid Asthmatic Powder. No matter what means you try for the relief of asthma or hay fever, it is most important that Calafoliquid be used regularly for at least several weeks. In many cases the Liquid is all the medicine that will be needed.

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A moment's thought should tell anyone that such stubborn and chronic diseases as asthma and hay fever cannot always be cleared away in a few days. William H. Stemmerman, M. D., the originator of Calafé formulas, stated that the use of Calafé Liquid should be persisted in for a few weeks, at least, to help clear the system of the asthmatic tendency or trait.

In truth and in fact by the use of any or all of, said products asthma and hay fever do not disappear like magic. Their distressing symptoms do not disappear. The user of said products does not regain health. One who uses said products pursuant to respondents said directions for their use is in danger of harmful results from the cumulative effects of the poisonous tendency of the constituent elements thereof. Said products as so constituted and under said directions are dangerous, and are unfit for careless and indiscriminate distribution to the public in general. Said products do not constitute a competent or effective treatment or remedy for the cure of asthma or hay fever, nor will their use clear the system of the user of an asthmatic tendency or trait.

In truth and in fact, the ailments or diseases known as asthma and hay fever are persistent and difficult of competent and effective treatment and cure. Competent and effective treatments and remedies must be compounded with skill and care and used under careful directions and safeguards, and it may not truthfully be said of them, or any of them, that by their use asthma or hay fever will be certainly, quickly, easily and permanently cured.

PAR. 7. Said statements and representations so made by respondent, and said directions for the use of its said remedies by purchasers or users thereof so given by respondent, have the tendency and capacity to mislead and deceive the public and prospective purchasers into the erroneous belief:

1. That all said statements and representations are true.
2. That it is safe for all users of said products to take and use the same as so directed.
3. That by the use of said products asthma and hay fever will certainly disappear like magic; their distressing symptoms will cease; and the user will regain his health.
4. That said products constitute a competent and effective treatment and remedy for the cure of asthma and hay fever.
5. That said products are superior to all other remedies being offered for sale or sold to the public for the treatment and cure of asthma and hay fever.

Said statements and representations so made by respondent have the tendency and capacity to induce the public and prospective purchasers, in and because of such erroneous belief, to purchase re-

spondent's said products in preference to, and to the exclusion of, any and all identical or like or otherwise competitive products, to wit: preparations, systems, methods, remedies, or other means of treatment so being offered for sale in said commerce by said competitors of respondent as hereinabove alleged; thereby diverting trade to respondent from its said competitors, to the substantial injury of such competitors, and to the deception and injury of the public.

PAR. 8. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitor's 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 August 6, 1935, issued and served its complaint in this proceeding upon the respondent Calafó Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of the said complaint were introduced by Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, no testimony being offered in defense of the allegations of the complaint by the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto and the testimony and evidence, respondent having waived the filing of briefs and oral argument; and the Commission having duly considered the same, and being fully advised of 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 is a corporation organized and doing business by virtue of the laws of the State of California with its principal office and place of business at 620 West Olympic Blvd., in

the city of Los Angeles, in the State of California, and is engaged in the business of offering for sale and selling certain medical preparations under the trade names "Calafoliquid," "Calafoliquid Asthmatic Powder" or "Calafoliquid Mentholated Powder" and "Calafoliquid Asthmatic Inhalettes" or "Calafoliquid Inhalettes" for the treatment of, or as remedies for, the ailments or diseases which are usually known and referred to as asthma and hay fever.

Respondent markets its products through dealers in drugs and medicines for resale to the public and by sales direct to persons desiring to purchase remedies or treatments for asthma and hay fever. Respondent offers for sale and sells its medical preparations in interstate commerce and makes sales in many of the States of the United States other than the State of California, and when sales are made the respondent causes its products to be transported from its place of business in the city of Los Angeles in the State of California to the purchasers thereof.

The respondent is in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with individuals, firms, and other corporations, who are engaged in said commerce in the business of offering for sale and selling remedies, preparations and products similar to and for use for the same purposes as those for which the respondent advertises and sells its products.

PAR. 2. Respondent, in the course and conduct of its business, advertises its said medical preparations through newspapers in various cities in several States of the United States, by means of radio broadcasts, through pamphlets, circulars, and other printed matter inclosed with said preparations, and through form letters mailed direct to prospective customers.

The preparation "Calafoliquid" is in liquid form and at the time of the issuance of the complaint herein contained $7\frac{2}{10}$ minims of alcohol, $\frac{9}{10}$ of a grain of opium, $13\frac{3}{5}$ grains of arsenious acid, 8 grains of belladonna and 80 grains of potassium iodine per fluid ounce. Subsequent to the issuance of the complaint herein, the respondent changed the formula for the preparation "Calafoliquid" by eliminating all of the ingredients except potassium iodine and water. Under both formulae flavoring matter is added to make the preparation pleasant to the taste. The preparations "Calafoliquid Asthmatic Powders" and "Calafoliquid Asthmatic Inhalettes" are in powder form and contain 99.90 stramonium leaf, commonly known as jimson weed, and 0.10 menthol. The "powder" is to be used by burning in a dish and inhaling the vapor or smoke therefrom and the "inhalettes" are in the form of a cigarette and are to be smoked.

Subsequent to the issuance of the complaint herein respondent changed the name of the preparation in powder form from "Calafó Asthmatic Powder" to "Calafó Mentholated Powder" and from "Calafó Asthmatic Inhalettes" to "Calafó Inhalettes".

Hereinafter, in these findings, when reference is made to the preparations above described and sold by the respondent, Calafó Liquid is considered under both of the formulæ used by the respondent unless otherwise indicated.

PAR. 3. In the course and conduct of its business, by the means and in the manner above set out, the respondent represents and implies that the use of its preparations will cause asthma and hay fever to disappear like magic, the distressing symptoms of asthma and hay fever to disappear, and the user of said preparations to regain health. Respondent represents and implies that said preparations are a competent and effective remedy for the treatment and cure of asthma and hay fever; that said preparations are safe for all users; and that said preparations are superior to other treatments or remedies for asthma and hay fever.

By the means and in the manner above stated, the respondent, among others of similar import and meaning, makes the following statements and representations concerning its said preparations:

"ASTHMA AND HAY FEVER DISAPPEAR LIKE MAGIC!

NEW MONEY-BACK REMEDY AFFORDS QUICK RELIEF

Calafó liquid relieves the distressing symptoms of Asthma and Hay Fever or money back. No questions—you are the judge. Calafó liquid, a different remedy, promises you relief. You breathe freely—sleep all night—regain health! The distressing symptoms disappear. Don't suffer longer—try Calafó liquid."

* * * * *

"Here is Important Information: No one should be hasty and impatient; no one should jump at the conclusion that Calafó Liquid will not be beneficial just because it does not, in every case, give good results 'in a jiffy'. Here are some facts that every sufferer from asthma or hay fever should remember: Two kinds of medicine are sometimes (but not in every case) required in the successful treatment of asthma and hay fever. One is Calafó Liquid, which acts through the general system via the blood and nerves, the other is Calafó Asthmatic Powder. No matter what means you try for the relief of asthma or hay fever, it is most important that Calafó Liquid be used regularly for at least several weeks. In many cases the Liquid is all the medicine that will be needed.

A moment's thought should tell anyone that such stubborn and chronic diseases as asthma and hay fever cannot always be cleared away in a few days. William H. Stemmerman, M. D., the originator of Calafó formulas, stated that the use of Calafó Liquid should be persisted in for a few weeks, at least, to help clear the system of the asthmatic tendency or trait."

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In truth and in fact said preparations do not and will not cause asthma and hay fever to disappear like magic, nor to disappear at all; they do not and will not cause the distressing symptoms of asthma and hay fever to disappear; and the user of said preparations will not regain health as a result of such use.

In truth and in fact said preparations do not possess the therapeutic efficacy represented by the respondent in the treatment and cure of asthma and hay fever, nor are said preparations safe for use by all persons afflicted with asthma and hay fever.

PAR. 4. The representations and implications of the respondent hereinabove set out are false and misleading and have the tendency and capacity to and do mislead and deceive many persons afflicted with asthma or hay fever or both. They lead such persons to believe that said preparations cause said ailments and the symptoms thereof to disappear; that the users of said preparations will regain health; that said preparations are a competent and effective remedy for the treatment and cure of asthma and hay fever and may safely be used by all persons suffering from said ailments; and that said preparations possess the therapeutic efficacy represented by the respondent in the treatment and cure of asthma and hay fever, and cause such persons, because of such erroneous belief, to purchase said preparations, thereby unfairly and substantially diverting trade to the respondent from its competitors in interstate commerce who do not misrepresent their products, to their injury and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint filed herein on August 6, 1935, the answer of the respondent Calafó Company, Inc., a corporation, and testimony and evidence in support of the charges of said complaint, the respondent offering no testimony or evidence in opposition to said charges and having waived filing of briefs and oral argument, and the Commis-

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sion having made its findings as to the facts and its conclusion that the respondent has violated provisions of an Act of 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 Calafco Company, Inc., a corporation, in connection with offering for sale and selling certain preparations for the treatment of the ailments commonly known as asthma and hay fever which it sells under the names "Calafco Liquid", "Calafco Asthmatic Powder", "Calafco Mentholated Powder", "Calafco Asthmatic Inhalettes" and "Calafco Inhalettes", or any liquid, powder or other preparation, under whatever name sold, composed of similar ingredients and possessing similar therapeutic properties to the preparations now known as and sold under the names above mentioned, in commerce between and among the several States of the United States and in the District of Columbia, forthwith cease and desist from, directly or indirectly, representing:

1. That said preparations will cause asthma or hay fever and the symptoms thereof to disappear;
2. That persons afflicted with asthma or hay fever will regain their health if they use said preparations;
3. That said preparations constitute a competent and effective remedy for the treatment and cure of asthma or hay fever;
4. That said preparations may safely be used by all persons afflicted with asthma or hay fever.

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

IN THE MATTER OF

RICHARD B. YANCEY AND MRS. E. Y. COUNCILL, TRADING AS INTERNATIONAL CHINA COMPANY AND AS BAKER POTTERY COMPANY

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

Docket 2625. Complaint, Nov. 12, 1935—Decision, Aug. 23, 1936

Where a firm engaged in sale of chinaware, earthenware, and other pottery of various kinds through traveling salesmen, whom they supplied with samples for use in soliciting orders from customers or prospective customers, who had no means of learning condition of merchandise until payment therefor had been made—

- (a) Falsely represented through former that their "odds and ends" assortment of 1,020 pieces, consisting, generally, of cups and saucers, plates of various sizes and styles, platters, bakers, etc., would not include more than three designs, patterns, and decorations, and would provide, in every instance, at least three complete sets of thirty-six pieces of uniform design, pattern, or decoration, and filled orders secured thereby, facts being it was impossible to assemble even one such set therefrom;
- (b) Filled orders with merchandise which was inferior to that represented by samples exhibited to customer, or by salesman's statements or representations, and which differed in quality, kind or design from that represented and with many items chipped, cracked, or broken upon receipt, notwithstanding salesmen's representation that quality and marking of chinaware or earthenware would be as indicated by samples or pictures, and that such various products would be received by customer as represented, and intended failure of shipments to correspond with samples, and as a practice failed and refused to adjust claims resulting from such misrepresentations, acts, and practices which it acquiesced in and ratified, and from merchandise's failure to correspond to samples exhibited;
- (c) Represented, as above set forth, that said "odds and ends" assortments were not in fact "odds and ends," but composed of ware made up for chain stores with a few remaining sets offered as "deals" and given former designation only to effect reduction in freight rates, notwithstanding fact such assortments were in truth and in fact odds and ends, as known in trade, and not "left-overs" or "deals" thus offered;

With result that such misrepresentations and practices gave them an unfair advantage over competitors who offer and sell chinaware and pottery of all kinds and truthfully advertise, describe and represent the same and do not make use of such business methods, and of diverting business from concerns in active, substantial competition with them, to themselves; to the substantial injury of substantial competition in commerce:

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

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Before *Mr. Edward M. Averill*, trial examiner.

Mr. James M. Brinson for the Commission.

Mr. W. T. Shuford, of Salisbury, N. C., 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 Richard B. Yancey and Mrs. E. Y. Council, trading as International China Company and as Baker Pottery 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 thereto would be in the public interest, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondents Richard B. Yancey and Mrs. E. Y. Council are now and for more than a year last past have been co-partners trading under the names and styles of International China Company and Baker Pottery Company with their office and principal place of business at the city of Salisbury in the State of North Carolina. They are now and during said period of time have been engaged in the sale in commerce among and between the State of North Carolina and the various other States of the United States and the District of Columbia in chinaware, earthenware, and other pottery of various kinds. It has been and is their practice to cause their products when sold to be transported from factories where they are made for respondents in Tennessee, Ohio, and Virginia, to purchasers thereof located in the various States of the United States other than the States from which such shipment originated.

In the course and conduct of their business respondents have been at all times hereinafter mentioned and now are in competition with the individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of china, chinaware, earthenware, and pottery of all kinds.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof respondents as jobbers have sold the usual line of domestic chinaware to retailers and also have sold and sell such products in half and full size assortments through the agency of travelling salesmen or solicitors whose practice it has been to secure orders for the same from customers and prospective customers in the various States of the United States. Said salesmen or solicitors, having been duly authorized by respondents, and acting within the

scope of their employment, have made the following and other similar or equivalent statements and representations to customers and prospective customers when soliciting orders for the products of respondents, to wit, that the products in each assortment were of one design and grade and that the quality and marking of the china-ware sold would be the same as indicated by sample or picture shown the customer or prospective customer; that the fine quality samples shown customers and prospective customers have been made for a chain store and that a few sets only were left over which were being offered as "deals"; that there were not more than three designs and at least three complete sets of 36 pieces to a set in each assortment; that the goods for sale were described on the sales slips as "odds and ends" only for the reason that it is necessary in order to obtain reduced freight rates on the goods and that such words "odds and ends" have no other significance and that the goods would be as represented.

In truth and in fact the products so offered for sale and sold by salesmen or solicitors on behalf of respondents were really what are known in the trade as "odds and ends" and consisted of various designs and grades out of which it was and is impossible to assemble complete sets. Such products have not been made for chain stores and they were not and are not leftovers or "deals". The words "odds and ends" were really descriptive of the products and were not and are not used because of any reference to or consideration of reduced freight rates. Many of the products, upon receipt by the purchasers have been chipped and cracked and broken. Furthermore many of the purchasers had no means of ascertaining the condition of the merchandise purchased until it had been received and payments made therefor. Respondents, through their agents, insisted upon payment before delivery and it has failed and neglected to adjust complaints resulting from the misrepresentations of its salesmen and solicitors.

It has been and is the practice of respondents to use on their letterheads in soliciting orders for their merchandise the words "imported and domestic" and in their correspondence with customers and prospective customers they have used the words "Our factory". It has also been the practice of respondents to use as one of their trade names the words Baker Pottery Company, thereby signifying and implying that respondents have a pottery for the manufacture of the wares which they sell to the purchasing public. In truth and in fact the products so offered for sale and sold by respondents have been and were and are domestic products and none of them was imported, and respondents neither own, control, nor operate any

factory or pottery wherein their products were or are made. (On the contrary, it has been and is their practice to purchase such products from others or from the manufacturers thereof for resale to the purchasing public.

PAR. 3. There are and have been for several years last past individuals, partnerships, and corporations offering for sale and selling in interstate commerce chinaware and pottery of all kinds.

PAR. 4. The statements and representations made by respondents and their agents, salesmen, or solicitors, as described in paragraph 2 hereof, as inducements for the purchase of their product, have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and into the purchase of respondents' products in reliance on such erroneous belief.

Such statements and representations likewise have had and have and each of them has had and has the capacity and tendency to divert trade to respondents from competitors offering for sale or selling in interstate commerce china, chinaware, earthenware, glassware, and pottery of all kinds, truthfully described.

PAR. 5. The above and foregoing practices of respondents 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."

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 12th day of November 1935, issued and served its complaint in this proceeding upon respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents filed answer by W. T. Shuford of Salisbury, N. C., as their attorney. Thereafter hearings were held for the taking and receiving of testimony and other evidence before Edward M. Averill, an examiner of the Federal Trade Commission theretofore duly appointed for such purpose. The Commission was represented in course of such hearings by James M. Brinson as its attorney. The evidence so taken and received was duly recorded and filed in the office of the Commission.

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Thereafter, this proceeding having regularly come on for final hearing before the Commission on the complaint, the answer thereto, the evidence, and brief in support of the complaint, respondents having failed to file brief or make request for oral argument; and the Commission having considered the whole record and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Richard B. Yancey and Mrs. E. Y. Councill are now and for more than a year last past have been co-partners trading under the names and styles of International China Company and Baker Pottery Company, with their office and principal place of business at the city of Salisbury in the State of North Carolina. They are now, and during said period of time have been, engaged in the sale of chinaware, earthenware, and other pottery of various kinds.

It has been and is their practice, pursuant to such sales and as a part thereof, to cause their products to be transported from factories where they are made for respondents in Tennessee, Ohio, and Virginia, to purchasers thereof located in the various States of the United States other than the States from which such shipments originate.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents have sold the usual line of domestic chinaware to retailers and also have sold such products in half and full size assortments through the agency of traveling salesmen. These traveling salesmen obtain orders from customers or prospective customers for the merchandise which respondents offer for sale and sell to the purchasing public. Respondents furnish them with samples of the products which they are authorized to sell, and such salesmen as part of their equipment carry with them and exhibit such samples to prospective customers. Among the assortments of chinaware or earthenware which they are authorized to offer for sale and sell is an assortment designated by respondents and their salesmen as "odds and ends." Such assortments each contain 1,020 pieces of chinaware or earthenware, which generally consists of cups and saucers, plates of various sizes, including soup plates and fruit plates, also platters, bakers, cream pitchers, sugar bowls, etc. Typical of the so-called assortments of "odds and ends" is the list of china-

ware or earthenware which appears in one of the orders therefor received in evidence in this matter:

20 Dozen Cups & Saucers
 16 Dozen Plates 6''
 8 Dozen Plates 7''
 10 Plates 9''
 8 Dozen Soups
 5 Dozen Fruits 6''
 1 Dozen Platters 11''
 1 Dozen Platters 13''
 2 Dozen Cream Soups
 1 Dozen Nappies
 1 Dozen Bakers
 1 Dozen Creams
 1 Dozen Sugars

Salesmen of respondents, having been duly authorized by respondents and having been furnished as aforesaid by respondents with samples of chinaware or earthenware for which they were to solicit orders, and acting within the scope of their authority and employment, have made the following and other similar or equivalent statements and representations to customers and prospective customers, and by means thereof have secured for respondents orders for their said chinaware or earthenware, including their so-called assortments of "odds and ends", to wit, that the quality and marking of the chinaware or earthenware would be the same as indicated by said samples or by pictures; that it had been made for chain stores and that a few sets only were left over, which were being offered as "deals"; that there were not and would not be in any assortment of "odds and ends" more than three designs, patterns or decorations, and that the assortment would provide in every instance at least three complete sets of 36 pieces each, of uniform design, pattern, or decoration; that the chinaware or earthenware offered for sale as assortments of "odds and ends" were so described only for the reason that it was necessary in order to secure reduced freight rates on the merchandise, and that such words "odds and ends" had no other significance; and that the chinaware or earthenware would be received by the customer as it was represented to be by the salesman or solicitor.

In truth and in fact the products so offered for sale were what are known in the trade as "odds and ends" and consisted of various designs and grades, out of which it was impossible to assemble three complete sets or even one set; the items of the assortments were not "left-overs" of sets made for chain stores and they were not being offered as "deals"; the words "odds and ends" were truly descriptive of the products. The respondents, with full knowledge of the afore-

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said misrepresentations, acts and practices of their representatives, acquiesced and ratified the same.

Many of the items are and have been chipped or cracked or broken upon receipt by the customer; and shipments when received do not correspond and have not corresponded with the samples which induced the orders, and it was not the intention of respondents, at the time the samples were exhibited to the prospective customer, that the wares to be shipped should or would correspond with the samples.

Purchasers had no means of learning the condition of the merchandise until payment therefor had been made, and respondents, as a practice, fail and refuse, and have failed and refused, to adjust claims resulting from the misrepresentations of their salesmen and from the failure of the merchandise to correspond to the samples.

PAR. 3. There are and have been for several years last past, individuals, partnerships, and corporations offering for sale and selling, in interstate commerce, chinaware and pottery of all kinds, who truthfully advertise, describe, and represent their wares and who do not make use of the other methods of business hereinabove described, with whom respondents have been and are in active, substantial competition. Respondents' misrepresentations, their practice of filling orders with merchandise inferior to samples exhibited and their failure to adjust claims arising therefrom, as above set forth, give and have given respondents an unfair advantage over their said competitors and tend to divert, and divert, business from said competitors. Thereby substantial injury has been and is being done by respondents to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent are 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, no testimony having been offered in opposition thereto, brief filed herein by counsel for the

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Commission, respondents having failed to file brief or make request for oral argument, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondents, Richard B. Yancey and Mrs. E. Y. Council, trading as International China Company and as Baker Pottery Company, their agents, employees, and other representatives, in connection with the offering for sale or sale in interstate commerce of chinaware, earthenware, and other pottery of various kinds, do forthwith cease and desist:

1. From misrepresenting the number of complete sets of dishes or other chinaware or earthenware that may be made up from the various pieces contained in their assortment designated "odds and ends";

2. From filling orders for chinaware and earthenware with such merchandise in a condition inferior to the condition represented by the samples exhibited to the customer or by the statements and representations of salesmen, or with merchandise of a quality or kind or design different from that represented;

3. Representing that the assortments are not in fact "odds and ends", but are made up of dishes that have been made for the chain stores, and are designated as "odds and ends" only to effect a reduction in freight rates, unless such are the facts.

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

IN THE MATTER OF
T. S. CRAIG, DOING BUSINESS AS UNITED SILK COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2490. Complaint, July 3, 1935—Decision, Sept. 1, 1936

Where an individual engaged in offer, sale, and distribution of hosiery to purchasers among the several States and in soliciting orders therefor in person and through salesmen, by house-to-house canvass in various towns and cities, and demanding and receiving, at time of order, part or all of purchase price, with any unpaid balance C. O. D., and in exhibiting, in course of such solicitations, purported samples of each quality or grade and order blank purportedly showing mill number, regular retail price, and description of each style, number or sample, along with representation that various samples were respectively representative of the hosiery described and identified by purported mill numbers—

- (a) Filled orders with hosiery which differed in size or color or quality from that ordered and was inferior in quality or grade to that of sample chosen and indicated by purported mill number description, notwithstanding his representation to purchasers that he would deliver goods of size and color desired and selected and of the quality or grade represented by samples chosen and indicated by purported mill number description;
- (b) Accepted all or part of purchase price for such hosiery which differed in size, etc., from that ordered, and was not delivered to purchaser at time promised, or at all, notwithstanding his aforesaid representations as to size, color, and quality or grade, and failed and refused to make good his aforesaid representations and promises and to deliver to purchasers hosiery of size, color, and quality or grade ordered, or to refund purchase price paid therefor;
- (c) Falsely promised, in many instances, to include free pair with order for as many as six, as inducement to prospect to purchase the larger quantity, and, in such instances, failed and refused so to do at time of shipment, or to make good such promise through delivery of free pair upon having his attention called to failure to include, as promised, such pair;
- (d) Represented, in many instances, to prospective purchasers that his hosiery would wear for a specified length of time and usually guaranteed six months' wear for three pairs and a year for six, and promised, in event of their failure so to wear, to replace worn with new hosiery until expiration of guarantee period, notwithstanding fact said goods did not and would not, under normal conditions, wear for period specified and he did not make such replacements;
- (e) Represented, through said order blanks, exhibited to prospective purchasers as aforesaid and display thereon of purported mill numbers and description of hosiery designated thereby or otherwise, and use of trade name including words "United Silk Company", together with designation "Dallas Office", that such purchasers were dealing with an established, substantial concern which carried in stock or had available for delivery hosiery of quality or grades indicated as aforesaid, facts being so-called company was a trade name merely and not an established, substantial business and

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had no "Dallas Office" other than said individual's residence in said city, and such individual had no offices elsewhere and did not carry in stock or have available for delivery hosiery in qualities or grades indicated by mill numbers, but filled orders by purchasing from various merchants in aforesaid city hosiery of no fixed quality or grade, but inferior to qualities or grades exhibited and indicated as above set forth, and purchased same wherever he could secure most advantageous price; and

- (f) Represented as regular retail prices for such products purported prices therefor, including deposit and C. O. D. amounts displayed on said order blanks, exhibited as aforesaid, together with an enumeration of different items of hose offered, and supposed mill number, and caused purchasers to believe that they were the regular prices for said goods and accepted orders at prices ranging from one-half to one-third of those indicated, and thereby lead purchasers to believe that they were buying hosiery of quality or grade indicated at a substantial reduction from regular prices, facts being prices thus displayed were wholly fictitious;

With effect of misleading and deceiving prospective purchasers into erroneous belief that said false and fraudulent representations were true and that he would perform such false and fraudulent promises, and of causing substantial number of prospective purchasers to buy said goods in lieu of those of competitors, which, but for such acts and practices, they would purchase, and of thereby substantially diverting trade to himself from his competitors; to their injury and that of the public:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition in violation of section 5.

Before *Mr. W. W. Sheppard*, trial examiner.

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 T. S. Craig, 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 is an individual trading as the United Silk Company, with his principal place of business in the city of Dallas, State of Texas. Respondent is now, and has been for the several years last past, engaged in offering for sale, selling, and distributing hosiery to purchasers in commerce among the several States of the United States. Respondent causes said hosiery when sold, to be transported from his principal place of business in the city of Dallas, State of Texas, into and across the several States of the

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United States to the purchasers thereof located at various points in the said several States of the United States, other than the State of Texas. Other persons and corporations, associations, and partnerships, who do not use the methods of competition used by the respondent as hereinafter alleged, are engaged in offering for sale, selling, and distributing hosiery to purchasers in said commerce among the several States of the United States.

Respondent, in the course and conduct of his business in said commerce as aforesaid, is in substantial competition with such other persons and corporations, associations, and partnerships in offering for sale, selling and distributing said products in said commerce.

PAR. 2. Respondent, in the course and conduct of his business in said commerce as above alleged, personally, and at times through salesmen employed by him, solicits and accepts orders for said hosiery by canvassing from house to house in various towns and cities located in the several States of the United States, contacting prospective purchasers for his said product. When an order is secured, respondent demands and receives a part or all of the purchase price and promises to make delivery of the order by mail at a subsequent date. If all of the purchase price is not paid at the time the order is accepted, the merchandise is to be sent C. O. D. for the balance due. Respondent, in person and through said salesmen, in so soliciting and accepting orders for hosiery, exhibits to prospective purchasers purported samples of each quality or grade of hosiery sold by him, and exhibits an order blank which purports to show the mill number, the regular retail price and a description of each of the samples exhibited.

PAR. 3. Respondent, in the course and conduct of his business in said commerce as aforesaid, represents that each of said samples exhibited is representative of the hosiery described and identified by one of the purported mill numbers on the order blank, and falsely and fraudulently represents to purchasers of his hosiery that he will deliver to them hosiery of the size and color desired and selected and of the quality or grade represented by the sample selected and as indicated by the purported mill number description. In truth and in fact respondent ships hosiery of a quality or grade inferior to the sample selected and of a quality and grade inferior to that indicated by the purported mill number description, and not of the size and color selected by the purchaser. After discovery and complaint by the purchaser of the size, color, and inferior quality or grade of the hosiery delivered by the respondent, the respondent fails and refuses to make good his representations and promises and to deliver the hosiery ordered or to refund the purchase price therefor.

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PAR. 4. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances represents to prospective purchasers that his hosiery will last for a specified length of time, usually that three pairs will last for 6 months and that six pairs will last for 1 year, and promises that, if it does not last the prescribed period of time, he will replace the worn hosiery with new hosiery until the expiration of the period of time for which the guarantee is made. In truth and in fact said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery until the expiration of such period of time as promised.

PAR. 5. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances, to induce prospective purchasers to purchase a larger quantity of hosiery, promises to include one pair free if as many as six pairs are ordered. In such instances, the respondent fails and refuses to include the so-called free pair in the order when shipment is made, but ships only the number of pairs ordered and for which payment is made, and he thereafter fails and refuses to deliver said free pair as promised.

PAR. 6. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances, solicits and accepts orders for hosiery, demanding and receiving payment of all or a substantial part of the purchase price, promising to make delivery of the hosiery ordered by mail, and does not thereafter make delivery of any hosiery to such purchaser nor does he return to such purchaser all or any part of the advance payment made.

PAR. 7. The order blanks exhibited to prospective purchasers by the respondent are, in part, substantially as follows:

Pay Only Deposit as Printed

Dallas Office	UNITED SILK CO. Dallas, Texas		
Mill No.			
102	Ladies Chiffon Hose.....	Deposit.....	3.75
	6 PAIR FOR 15.00.....	C. O. D.....	11.25
100	Ladies Silk Hose.....	Deposit.....	2.50
	6 PAIR FOR 10.00.....	C. O. D.....	7.50
108	Ladies Full Fashioned Hose.....	Deposit.....	3.25
	6 PAIR FOR 13.00.....	C. O. D.....	9.75
102-A	Ladies Service Hose.....	Deposit.....	1.50
	6 PAIR FOR 6.00.....	C. O. D.....	4.50
600	Men's Fancy Silk Hose.....	Deposit.....	1.50
	6 PAIR FOR 6.00.....	C. O. D.....	4.50
300	Guaranteed Men's Hose.....	Deposit.....	1.00
	6 PAIR FOR 3.00.....	C. O. D.....	2.00

The use on said blanks of the name "United Silk Co." and the designation "Dallas Office" and the use of the term "Mill No." with the description and purported price of each quality or grade is calculated and intended by the respondent to and does cause such prospective purchasers to believe that they are dealing with an established, substantial concern which carries in stock or has available for delivery hosiery of the qualities or grades indicated by the mill number. In truth and in fact the "United Silk Co." is a trade name used by the respondent and is not an established, substantial business and has no Dallas, Tex., office other than respondent's residence, nor has respondent an office elsewhere, and respondent does not carry in stock nor has he available for delivery hosiery of the qualities or grades indicated by the mill number, but he fills the orders secured by purchasing from various merchants in Dallas, Tex., wherever the price is most advantageous, hosiery of no fixed quality or grade and inferior to the qualities and grades exhibited and indicated by the mill number.

The prices printed on said order blanks are fictitious, without any basis in fact, and are calculated and intended to and do cause purchasers to believe that the price indicated is the regular price for each mill number as indicated. Respondent represents to purchasers that he is making a special offer and accepts orders for hosiery at prices ranging from one-third to one-half of the prices indicated on said order blank.

PAR. 8. The above alleged acts and practices of the respondent have the capacity and tendency to and do mislead and deceive prospective purchasers of hosiery into the erroneous belief that such false and fraudulent representations are true and have the capacity and tendency to and do cause a substantial number of such prospective purchasers to purchase respondent's said hosiery in lieu and instead of the hosiery of his competitors, which such prospective purchasers would purchase but for the acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors.

PAR. 9. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition within the intent and meaning 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."

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. 1935, issued its complaint against the respondent, T. S. Craig, trading as the United Silk Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, no answer having been filed by the respondent, testimony and evidence, in support of the allegations of the said complaint, were introduced by Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, no testimony or evidence being offered in defense of the allegations of the complaint by the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, brief in support of the complaint, no brief having been filed by the respondent, and oral argument having been waived; 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent T. S. Craig is an individual trading as the United Silk Company, with his principal place of business in the city of Dallas, and State of Texas. Respondent has been for the several years last past engaged in offering for sale, selling, and distributing hosiery to purchasers in commerce among the several States of the United States. Respondent causes said hosiery, when sold, to be transported from Dallas, Tex., to the purchasers thereof located at various points in the said several States of the United States other than the State of Texas. Many other persons and many corporations, associations, and partnerships, who do not use the methods of competition used by the respondent as hereinafter set out, are engaged in offering for sale, selling, and distributing hosiery to purchasers in said commerce among the several States of the United States, and the respondent, in the course and conduct of his business, is in substantial competition with such persons, corporations, associations, and

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partnerships in offering for sale, selling, and distributing said hosiery in said commerce.

PAR. 2. Respondent, in the course and conduct of his business in said commerce, personally and at times through salesmen employed by him, solicits and accepts orders for hosiery by canvassing from house to house in various towns and cities, located in the several States of the United States. When an order is secured, the respondent demands and receives a part or all of the purchase price and promises to make delivery of the order by mail at a subsequent date. If all of the purchase price is not paid at the time the order is accepted, the hosiery is to be sent C. O. D. for the balance due.

Respondent, in person and through said salesmen, in so soliciting and accepting orders for hosiery exhibits to prospective purchasers purported samples of each quality or grade of hosiery for which he solicits and accepts orders, and exhibits to prospective purchasers an order blank which purports to show the mill number, the regular retail price, and a description of each of the samples exhibited, and represents that each of said samples exhibited is representative of the hosiery described and identified by one of the purported mill numbers of said order blank.

PAR. 3. Respondent represents to purchasers of his hosiery that he will deliver to them hosiery of the size and color desired and selected and of the quality or grade represented by the sample selected and as indicated by the purported mill number description. In truth and in fact respondent ships to said purchasers hosiery of a quality or grade inferior to the sample selected and of a quality or grade inferior to that indicated by the purported mill number description, and of a size and color other than that selected by such purchasers. After discovery and complaint by said purchasers as to the size, color, and inferior quality or grade of the hosiery delivered by the respondent, he fails and refuses to make good his representations and promises and to deliver to such purchasers hosiery of the size, color, and quality or grade ordered, or to refund the purchase price paid therefor.

PAR. 4. Respondent, in many instances, represents to prospective purchasers that his hosiery will wear for a specified length of time, usually guaranteeing that three pairs will wear for 6 months and that six pairs will wear for 1 year, and promises that, if the hosiery ordered does not wear the prescribed length of time, he will replace the worn hosiery with new hosiery until the expiration of the period of time for which the guarantee is made. In truth and in fact, said hosiery will not and does not, under normal conditions, wear for the period of time specified, and the respondent does not replace worn

hosiery with new hosiery until the expiration of the period of time for which the hosiery is guaranteed.

PAR. 5. Respondent, in many instances, to induce prospective purchasers to purchase a larger quantity of hosiery, promises to include one pair free if as many as six pairs are ordered and, in such instances fails and refuses to include the promised free pair in the order when shipment is made, and ships only the number of pairs ordered and for which payment is made; and thereafter, when his attention is called to the fact that he has not included the promised free pair, refuses and fails to make good his promise by delivering said so-called free pair of hosiery.

PAR. 6. Respondent, in many instances, after having solicited and accepted orders for hosiery and having received payment of all or a substantial part of the purchase price and promising to make delivery of the hosiery ordered by mail, does not make delivery of any hosiery at all to such purchasers, nor does he return to such purchasers all or any part of the advance payment made.

PAR. 7. The order blanks exhibited to prospective purchasers by respondent are, in part, substantially as follows:

Pay Only Deposit as Printed

UNITED SILK CO.

Dallas
Office

Dallas, Texas

Mill No.

102	Ladies Chiffon Hose.....	Deposit.....	3. 75
	6 PAIR FOR 15.00.....	C. O. D.....	11. 25
100	Ladies Silk Hose.....	Deposit.....	2. 50
	6 PAIR FOR 10.00.....	C. O. D.....	7. 50
108	Ladies Full Fashioned Hose.....	Deposit.....	3. 25
	6 PAIR FOR 13.00.....	C. O. D.....	9. 75
102-A	Ladies Service Hose.....	Deposit.....	1. 50
	6 PAIR FOR 6.00.....	C. O. D.....	4. 50
600	Men's Fancy Silk Hose.....	Deposit.....	1. 50
	6 PAIR FOR 6.00.....	C. O. D.....	4. 50
300	Guaranteed Men's Hose.....	Deposit.....	1. 00
	6 PAIR FOR 3.00.....	C. O. D.....	2. 00

The use on said blanks of the name "United Silk Co." and the designation "Dallas Office," and the use of the term "Mill No." with the description and purported price of each quality or grade of hosiery, causes purchasers to believe that they are dealing with an established, substantial concern which carries in stock or has avail-

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able for delivery hosiery of the qualities or grades indicated by the mill number. In truth and in fact the "United Silk Company" is a trade name used by the respondent and is not an established, substantial business and has no "Dallas Office," other than that the respondent's residence is in Dallas, nor has the respondent offices located elsewhere, and respondent does not carry in stock nor has he available for delivery hosiery of the qualities or grades indicated by the mill numbers, but fills orders secured by purchasing from various merchants in Dallas, Tex., hosiery of no fixed quality or grade and inferior to the qualities or grades exhibited and indicated by the mill numbers. Respondent makes said purchases of hosiery wherever he can secure the most advantageous price.

The prices as printed on said order blanks are wholly fictitious, without any basis in fact, and cause purchasers to believe that the prices indicated on said order blanks are the regular prices for said hosiery. The respondent represents that the prices indicated on the order blanks are the regular retail prices for the hosiery, and he accepts orders for hosiery at prices ranging from one-third to one-half of the prices so indicated on said order blanks, leading purchasers to believe that they are purchasing hosiery of the qualities or grades indicated at a substantial reduction from the regular prices.

PAR. 8. Respondent's acts and practices as above set out have the capacity and tendency to and do mislead and deceive prospective purchasers of hosiery into the erroneous belief that said false and fraudulent representations are true and that the respondent will do and perform the false and fraudulent promises made; and have the capacity and tendency to and do cause a substantial number of prospective purchasers of hosiery to purchase respondent's said hosiery in lieu and instead of the hosiery of his competitors, which hosiery such prospective purchasers would purchase but for the acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors, to their injury and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint filed herein on July 3, 1935, the testimony and evidence in support of the charges of said complaint and the brief filed by counsel for the Commission, no answer or brief having been filed by the respondent and oral argument having been waived, 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 ordered, That the respondent T. S. Craig, trading as the United Silk Company, his agents, servants, and employees, in connection with offering for sale and selling hosiery in commerce among the several States of the United States, forthwith cease and desist from:

1. Filling orders with hosiery different from the size, or color, or quality ordered;

2. Accepting all or any part of the purchase price for hosiery when hosiery of the size, color, and quality or grade ordered is not delivered to the purchaser at the time promised;

3. Representing, directly or indirectly, to purchasers of hosiery that a free pair will be shipped with an order, unless and until a free pair is shipped with such order without added cost to the purchaser;

4. Representing, directly or indirectly, to purchasers that a certain number of pairs of hosiery will wear for a specified period of time and that, if they do not, the worn hosiery will be replaced with new hosiery until the expiration of the period of time specified, unless and until said hosiery will, under normal wear, last for the period of time specified; or if such hosiery does not wear for the period of time specified, until and unless respondent replaces such worn hosiery with new hosiery for the time specified.

5. Representing, by the use of purported mill numbers and a description of the hosiery designated by the mill numbers, or otherwise, that respondent has the hosiery offered for sale in stock and available for delivery, when such is not the fact;

6. Using the term "Dallas office", or other words of similar import and meaning, on order blanks, unless and until respondent actually maintains an office for the transaction of business in the city of Dallas, State of Texas;

7. Representing, directly or indirectly, through fictitious price marking on order blanks, or otherwise, that the price at which hosiery

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is offered is less than the usual and customary retail price for said hosiery, when such is not the fact.

It is further ordered, That the respondent T. S. Craig, trading as the United Silk Company, shall, within 60 days after 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

ANGELO CATALDO, INDIVIDUALLY AND TRADING AS
LIBERTY CHOCOLATE COMPANY AND AS ARCADIA
CHOCOLATE COMPANY

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

*Docket 2691. Complaint, Jan. 27, 1936—Decision, Sept. 1, 1936*¹

Where an individual engaged in manufacture and sale of candy, including two assortments, in one of which chance selection of one of individually wrapped penny pieces of uniform size, shape, and quality, differing in color from that of majority, entitled purchaser to one of larger pieces included, and in other of which chance selection of one of a small number of white-striped pieces included in assortment of individually wrapped penny pieces of uniform size, etc., entitled purchaser, without charge, to larger piece as prize, while purchaser of last piece in said assortments was respectively entitled, without charge, to box of candy or one of larger pieces included—
Sold said assortments, with explanatory display card, to wholesale and retail dealers for display and sale to purchasing public in accordance with aforesaid or similar plans and thereby supplied to and placed in hands of others means of thus conducting lotteries in sale of its products, as means of inducing purchase of its products in preference to candy offered and sold by competitors, in violation of public policy, long existing in common law and criminal statutes and of the established public policy of the United States Government;

With dangerous tendency unduly to hinder competition or to create monopoly in tendency and capacity of practice to exclude from branch of candy trade involved competitors who did not adopt and use such or equivalent or similar method, and with effect of inducing many dealers in and ultimate purchasers of candy, by reason of their attraction by element of chance involved in sale thereof, to buy its said product, so packed and sold, in preference to that offered and sold by competitors, many of whom are unwilling to offer and sell candy so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or other method contrary to public policy, and who refrain from so doing; and

With tendency and capacity to divert to him trade and custom from competitors who do not use same or equivalent methods, to exclude from said trade all competitors unwilling to and who do not use such method as unlawful, and to lessen competition in said trade and to tend to create a monopoly thereof in him and such other candy distributors as use such a method, and deprive purchasing public of benefits of free competition therein, and eliminate from trade involved all actual competitors and exclude therefrom all potential competitors who do not adopt and use such or an equivalent method:

¹ Order published, as modified, as of Nov. 4, 1936.

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Jay I. Moskow, of Boston, Mass., 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 Angelo Cataldo, individually and trading as Liberty Chocolate Company and also trading as Arcadia Chocolate Company, 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 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 is an individual, doing business under his own name and doing business under the trade names, Liberty Chocolate Company and Arcadia Chocolate Company, with his principal office and place of business in the city of Boston, State of Massachusetts. Respondent is now, and for several months last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale 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 his place of business in the city of Boston, State of Massachusetts, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various 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. Certain of said packages are

hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of candy of uniform size, shape and quality, together with a number of larger pieces of candy and a small box of candy, which larger pieces of candy and small box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality, in the following manner:

The majority of the said pieces of candy of uniform size, shape, and quality are of the same color, but a small number of said pieces of candy are of a different color. The said pieces of candy of uniform size, shape, and quality retail at the price of one 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. The purchaser of the last piece of candy of uniform size, shape, and quality, in said assortment, is entitled to receive, and is to be given free of charge, the small box of candy. Said pieces of candy of uniform size, shape, and quality are contained in individual wrappers, and the color thereof is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The aforesaid purchasers who procure a piece of candy colored differently from the majority, or the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy, or the small box of candy, wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is similar to the assortment described in paragraph (a) above, except that instead of some of the pieces being colored differently from the majority, a small number of pieces have a white stripe around the piece of candy, and the purchaser procuring one of these pieces of candy having a white stripe, is entitled to receive, and is to be given free of charge, a larger piece of candy as a prize, and the purchaser of the last piece of candy also receives one of the larger pieces of candy as a prize.

Respondent furnishes to said wholesale and retail dealers, with said assortments of candy, a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend or statement informing the prospective pur-

chaser that the said assortment is being sold in accordance with the above described sales plans.

PAR. 3. The wholesale dealers to whom respondent sells his assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy 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 his products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or a sale of a chance to procure larger pieces of candy or a small box of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 January 27, 1936, issued and served its complaint upon the respondent, Angelo Cataldo, individually and trading as Liberty Chocolate Company and as Arcadia Chocolate Company, hereinafter referred to as respondent, charging him with the use of unfair methods of competition in commerce as "commerce" is defined in said Act of Congress. Respondent filed answer to said complaint on February 14, 1936, and thereafter, on June 24, 1936, the respondent moved to withdraw the answer theretofore filed on February 14, 1936, and offered for filing an amended answer dated June 18, 1936, which motion was granted, and amended answer was received and filed. In the said amended answer respondent admits all the material allegations of the complaint to be true and consents that the Commission may, without further evidence, and without other intervening procedure, make, enter, issue, and serve upon him its findings as to the facts and conclusion based thereon, and an order to cease and desist from the methods of competition alleged in

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the complaint. This proceeding thereafter having regularly come on for final hearing on the said complaint and on the said amended answer of respondent dated June 18, 1936, the Commission, having duly 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 is an individual, doing business under his own name and doing business under the trade names, Liberty Chocolate Company and Arcadia Chocolate Company, with his principal office and place of business in the city of Boston, State of Massachusetts. Respondent is now, and for several months last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale 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 his place of business in the city of Boston, State of Massachusetts, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy and candy products in commerce among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has sold to wholesale and retail dealers various 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been using in the distribution of candy by lot or chance:

(a) One of said assortments was composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy and a small box of candy, which larger pieces of candy and small box of candy were to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality, in the following manner:

The majority of the said pieces of candy of uniform size, shape, and quality were of the same color, but a small number of said pieces of candy were of a different color. The said pieces of candy of uniform size, shape, and quality retailed at the price of one cent each, but the purchaser who procured one of the said candies of a different color than the majority, was entitled to receive, and was 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 of uniform size, shape, and quality, in said assortment, was entitled to receive, and was to be given free of charge, the small box of candy. Said pieces of candy of uniform size, shape, and quality were contained in individual wrappers, and the color thereof was effectively concealed from purchasers and prospective purchasers until a selection had been made and the wrapper removed. The aforesaid purchasers who procured a piece of candy colored differently from the majority, or the purchaser of the last piece of candy in said assortment, thus procured one of the said larger pieces of candy, or the small box of candy, wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent was similar to the assortment described in paragraph (a) above, except that instead of some of the pieces being colored differently from the majority, a small number of pieces had a white stripe around the piece of candy, and the purchaser procuring one of these pieces of candy having a white stripe, was entitled to receive, and was to be given free of charge, a larger piece of candy as a prize, and the purchaser of the last piece of candy also received one of the larger pieces of candy as a prize.

Respondent furnished to said wholesale and retail dealers, with said assortments of candy, a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bore a legend or statement informing the prospective purchaser that the said assortment was being sold in accordance with the above described sales plans.

PAR. 3. The wholesale dealers, to whom respondent sold his assortments, resold said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sold direct, exposed said assortments for sale, and sold said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involved a game of chance or a sale of a chance to procure larger pieces of candy or a small box of candy.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method had the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof had the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who did not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy were 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 were thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who did not use the same or equivalent methods. The use of said method by respondent had the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who did not use the same or an equivalent method; to exclude from said candy trade all competitors who were unwilling to and who did not use the same or an equivalent method because the same was unlawful; 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 used 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 had the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who did not adopt and use said method or an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances hereinabove described, 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued and served on January 27, 1936, and the answer of the respondent dated June 18, 1936, admitting all the material allegations of the complaint to be true and waiving all further proceedings herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated an Act of 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, Angelo Cataldo, individually and trading as Liberty Chocolate Company and as Arcadia Chocolate Company, his agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy and candy products, do cease and desist from:

1. Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, retail dealers and wholesale dealers and jobbers packages or assortments of candy which are used, or may be 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 candy or candy products contained in said assortments 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 but of different colors, or pieces of candy of uni-

¹ Published, as modified, as of Nov. 4, 1936.

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form size and shape, some of which have stripes running around them and others not having such stripes, together with larger pieces of candy or small boxes of candy, which said larger pieces of candy or small boxes of candy are to be given as prizes to the purchaser procuring a piece of candy of a particular color or a piece of candy having a stripe running around it;

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

And it is further ordered, That the respondent, Angelo Cataldo, individually and trading as Liberty Chocolate Company and as Arcadia Chocolate Company, within 30 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

CHARLES L. JOHNSON, INDIVIDUALLY AND TRADING AS
NATIONAL INSTITUTE OF ACCOUNTANCY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2524. Complaint, May 26, 1936¹—Decision, Sept. 2, 1936*

Where an individual engaged in sale and distribution of correspondence courses in accountancy, through salesmen supplied with printed enrollment blanks and contract forms with such caption as "Application for Membership in the Department of Practical Higher Accountancy," and with advertising matter to be passed on, in accordance with instructions, to purchasers and prospective purchasers—

- (a) Represented that corporate name employed by him in his said business and which included words "National Institute of Accountancy," stood for a corporation with offices in the Institute Building in the city in or from which he conducted said business, and was a large, substantial correspondence school comparable with leading correspondence schools in the United States, with staff of trained and experienced teachers who would instruct and advise students, and that he was its "President," "Treasurer," or "Director," through practice of thus signing letters to subscribers, and through aforesaid printed matter, facts being corporation so named, acquired by him theretofore, had been dissolved pursuant to court decree several years theretofore, neither he nor business indicated was domiciled in said building, and business was a one-man concern with no teaching staff other than himself, and, at times, one or two persons to assist in grading papers;
- (b) Represented, as aforesaid, that such Institute of Accountancy was authorized to confer degree of Bachelor of Science in accountancy, and that lesson papers were reviewed and graded by certified public accountants, and that such degree certified that student had completed required subjects given in course and was entitled to recognition as a graduate in business and professional accountancy, facts being he was not authorized to confer such a degree, and practically all lesson materials were reviewed and graded by himself and not by certified public accountants; and
- (c) Represented that he had positions as accountants at his disposal for students who completed said courses, and that prospective purchasers would be given employment and such positions, upon such completion, facts being he did not secure or give such positions to purchasers and had no arrangements with any concerns or other employers of accountants through which they would employ students who had completed and paid for his said courses;

With effect of inducing and persuading purchasers to buy the same, and with result that there was substantial diversion of trade to him from competitors; to their injury and that of the public:

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

¹ Amended and supplemental.

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Before *Mr. John L. Hornor*, trial examiner.

Mr. Morton Nesmith and *Mr. Joseph C. Fehr* for the Commission.

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 Charles L. Johnson, individually and trading as National Institute of Accountancy, Inc., 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 it appearing to said Commission that a proceeding by it, in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Charles L. Johnson, is an individual doing business individually and trading as National Institute of Accountancy, Inc., and has his principal place of business in Chicago, in the State of Illinois. The respondent is now, and for more than one year last past, has been engaged in the selling and distribution of correspondence courses in accountancy direct to the purchasing public, located in the various States in the United States and has caused said correspondence courses, when sold, to be transported from his place of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now and has been, for more than one year last past a constant current of trade and commerce by said respondent in aforementioned correspondence courses between and among the various States of the United States and the District of Columbia. In the course and conduct of said business, respondent is and has been in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of correspondence courses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent has been and is now soliciting the sale of and selling correspondence courses in accountancy through the medium of salesmen, which salesmen are furnished by respondent, for submission to prospective customers, enrollment blanks, written contract, and other advertising material, containing, among others, the following statements:

¹ Amended and supplemental.

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National Institute of Accountancy, Inc.

.Institute Building

4653 South Parkway

Chicago.

Graduation and Diploma. Upon Satisfactory completion of the course, the Institute confers a certificate of Graduation, conferring the Degree of Bachelor of Science in Accountancy is awarded, certifying that the student has completed the required subjects given in the course and is entitled to recognition as a graduate in Business and Professional Accountancy.

All papers are graded by Certified Public Accountants.

Said representations are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive the prospective customer. In truth and in fact the "National Institute of Accountancy, Inc." is not a corporation and is not and has not been domiciled in the "Institute Building"; neither the National Institute of Accountancy, Inc., the trade name used by respondent, nor the respondent is authorized to confer the Degree of Bachelor of Science in Accountancy; and the lesson papers of respondent's customers are not graded by certified public accountants.

PAR. 3. In the course and conduct of his said business the respondent and his agents and representatives in soliciting the sale of said course of study and instruction orally represent, promise, and guarantee, and have so represented, promised, and guaranteed to purchasers and prospective purchasers of respondent's course of study that they will be given employment and positions as accountants upon completion of the said courses of study.

Said statements and representations made by the respondent and his agents and representatives are misleading, false, and untrue and are made for the purpose of inducing persons to purchase respondent's said courses of study in the belief that they will secure employment and positions as accountants, as promised them by the respondent or his agents. In truth and in fact, subscribers of respondent's correspondence courses never secure such employment or positions through or by means of any efforts or arrangements of the respondent, as represented.

PAR. 4. The use by respondent of the above quoted statements and representations is unfair to other individuals, partnerships, and corporations selling similar correspondence courses in accountancy who do not use the same or similar false and misleading representations in the solicitation and the sale of their correspondence courses.

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By reason of the said false, misleading, and deceptive statements customers are and have been induced and persuaded to purchase the correspondence courses in accountancy offered by respondent and the methods thus used by respondent result in a substantial diversion of trade to respondent from his competitors.

PAR. 5. The aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and of the respondent's competitors as hereinabove alleged. Said methods, 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.

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 August 21, 1935, issued and served its complaint in this proceeding upon the respondent, Charles L. Johnson, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and evidence, in support of the allegations of said complaint, were introduced by Morton Nesmith, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, no testimony and evidence being offered by the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, upon the motion of the attorney for the Commission, and after notice of said motion was duly served upon the respondent, the Commission, on May 26, 1936, issued its amended and supplemental complaint, conformable to the testimony and evidence received at hearings theretofore held, and ordered that said testimony and evidence be received and considered under said amended and supplemental complaint. This amended and supplemental complaint charged the respondent, Charles L. Johnson, with the use of unfair methods of competition in commerce in violation of said act, and was duly served on May 29, 1936; answer was duly filed thereto by the respondent on June 19, 1936, but the respondent, although afforded an opportunity, did not offer any testimony and evidence in defense of the allegations of the amended and supplemental complaint, and has since waived the filing of briefs and oral argument herein. Thereafter, the proceed-

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ing regularly came on for final hearing, before the Commission on said amended and supplemental complaint, answer thereto, testimony and evidence, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Charles L. Johnson is an individual trading as National Institute of Accountancy, Inc. His principal place of business is now in Evanston, Ill., but formerly he carried on his business in offices located in Chicago, Ill.

The respondent Charles L. Johnson is now, and for more than one year last past, has been engaged in selling and distributing correspondence school courses in accountancy. To all persons to whom respondent or his agents sold or to whom they sell said correspondence courses as a result of contacts made with members of the purchasing public, the respondent has caused and causes lesson materials and other written and printed matter pertaining to the courses of instruction sold by him to be shipped through the United States mails from his place of business in the State of Illinois, through and into States of the United States other than the State of Illinois, and in the District of Columbia. Respondent is and has been in substantial competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of correspondence courses in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Charles L. Johnson in 1923 acquired control of the National Institute of Accountancy, Inc., a corporation organized under the laws of the State of Illinois. This corporation's charter was subsequently dissolved pursuant to the Decree of the Superior Court of Cook County, State of Illinois, on January 13, 1934. Respondent has since that time continued to represent and still so represents, that said National Institute of Accountancy, Inc. is a corporation when, in truth and in fact, the National Institute of Accountancy, Inc., ceased to be an active corporation and going concern on January 14, 1934, as aforesaid.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has been engaged in the business of soliciting the sale of and selling correspondence courses in accountancy through the medium of salesmen. The respondent and his agents and representatives offer and have offered purchasers and prospective purchasers a course in junior accountancy costing \$75,

another course in senior accountancy costing \$85, and a course in business and professional accountancy costing \$165. The initial payment which is usually \$10, but which is sometimes as low as \$2 and sometimes as much as \$15, is retained by the respondent's agents as part of their fee or commission for selling said courses of instruction.

The respondent's salesmen and representatives were and are furnished with forms of an "Application for Membership in the Department of Practical Higher Accountancy", enrollment blanks and contract forms, all of which printed material contained and still contains advertising matter, which said salesmen and representatives of the respondent, were and are instructed to pass on, and which was and is passed on by them to purchasers and prospective purchasers of respondent's correspondence courses. All letters from the respondent to subscribers of his correspondence courses were and are signed by him with the title "President", "Treasurer" or "Director" appearing after his name.

Among the printed matter now used and distributed by and on behalf of the respondent for the purpose of promoting the sale of his correspondence school courses appear the following statements;

National Institute of Accountancy, Inc.,
Institute Building
4653 South Parkway
Chicago.

Graduation and Diploma. Upon Satisfactory completion of the course, the Institute confers a certificate of Graduation, conferring the Degree of Bachelor of Science in Accountancy is awarded, certifying that the student has completed the required subjects given in the course and is entitled to recognition as a graduate in Business and Professional Accountancy.

All papers are graded by Certified Public Accountants

The representations above quoted are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of correspondence school courses. In fact, the National Institute of Accountancy, Inc., ceased to be a corporation on January 14, 1934, as aforesaid. Neither the respondent, Charles L. Johnson, nor the National Institute of Accountancy, Inc., has been, and is now, domiciled in the Institute Building. Nor has the respondent, Charles L. Johnson, been authorized to confer the degree of Bachelor of Science in Accountancy. All lesson materials returned to respondent by subscribers of the various courses to be reviewed and graded were not and are not

reviewed or graded by certified public accountants, as represented. Practically all such papers were and are reviewed and graded by the respondent, Charles L. Johnson, who was not, and is not now a certified public accountant.

PAR. 3. In the course and conduct of his business, the respondent and his agents and representatives, in soliciting the sale of said courses of study and instruction, have represented and do represent to prospective purchasers of said courses of study and instruction that such prospective purchasers will be given employment and positions as accountants upon completion of said courses of study and instruction.

In truth and in fact the respondent has not and does not secure for or give to those purchasing said courses of study and instruction and to whom the promise of employment and a position as an accountant was and is made, employment and a position as an accountant. This representation is made solely for the purpose of inducing the persons to whom made to purchase said courses of study and instruction, and many students who subscribed for said courses of study and instructions were misled and deceived by said representation and believed that the respondent would secure for or give to them employment and positions as accountants.

At all times such representations were and are made, the respondent had and has no such jobs or positions at his disposal to give to those who enrolled or subscribed or who enroll or subscribe to his courses of instruction. Respondent had and has no arrangements with any corporations, firms, or other employers of accountants through which such corporations, firms, or employers would employ students who had completed and paid for said courses of instruction in the belief that they would secure employment through him.

PAR. 4. In the course and conduct of his business the respondent and his agents and salesmen represent that the National Institute of Accountancy, Inc., is a corporation, with offices in the Institute Building, Chicago, Illinois, and that it is a large, substantial correspondence school, comparable with the leading correspondence schools in the United States, with a staff of trained and experienced teachers who will instruct and advise students.

In truth and in fact the National Institute of Accountancy, Inc., is not a corporation, but a trade name used by the respondent, who does not have or maintain offices in the Institute Building, Chicago, Ill., and the National Institute of Accountancy, Inc., is not a large, substantial correspondence school with a staff of trained and experienced teachers, but is a "one man" concern without any teaching

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staff, except the respondent, and at times one or two persons to assist in grading papers.

By reason of the said false, misleading, and deceptive statements purchasers are and have been induced and persuaded to purchase the correspondence courses in accountancy offered by respondent and the methods thus used by respondent result and have resulted in a substantial diversion of trade to respondent from his competitors, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances set forth 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 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 and supplemental complaint, the respondent's answer thereto, testimony and evidence taken before trial examiner, John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and amended and supplemental complaint (the filing of briefs and oral arguments having been waived) 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, Charles L. Johnson, his agents, representatives, servants, and employees, in connection with the sale and offering for sale in interstate commerce and in commerce in the District of Columbia, of correspondence courses of study and instruction, do forthwith cease and desist from, directly or indirectly, representing:

1. That the National Institute of Accountancy, Inc., is a corporation, with offices in the Institute Building, Chicago, Ill., and that it is a large, substantial correspondence school, comparable with the leading correspondence schools in the United States, with a staff of trained and experienced teachers who will instruct and advise stu-

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dents, and that respondent is its "President", "Treasurer" or "Director";

2. That the respondent is authorized to confer the degree of Bachelor of Science in Accountancy;

3. That the lesson papers when returned to respondent by subscribers are reviewed and graded by certified public accountants;

4. That the respondent has positions as accountants at his disposal for students who complete his said courses of study and instruction, unless and until such is the fact.

It is further ordered, That the said 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.

IN THE MATTER OF
NATIONAL SALESMEN'S TRAINING ASSOCIATION

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

Docket 2528. Complaint, Aug. 22, 1935—Decision, Sept. 4, 1936

Where a corporation engaged in sale and distribution of correspondence courses in salesmanship and sales management, and in sale and distribution of books and other printed matter in connection therewith—

- (a) Represented, in magazine advertising and through salesmen, that earning capacity of those who studied or completed its courses was greatly in excess of their earning capacity under normal conditions, through such exaggerated statements as "Salesmanship is the highest paid profession in the world," and "More salesmen make 'huge sums' than do men in other professions";
- (b) Made similar representations through testimonials in a booklet sent in response to inquiries and purporting to show increased earnings of purchasers who had completed said courses, in such manner as to indicate that such increased earnings of those who had studied said courses were usual, and what prospective purchasers would receive upon completing the same, facts being they were extraordinary and resulted from special conditions;
- (c) Falsely represented that demands from employers of salesmen for students of said courses exceeded the supply and that it was unable to supply such demand therefor, and that there would be no delay in placing prospective purchasers in positions as soon as they had completed a sufficient portion of their courses to qualify, and that upon completion of its courses, it would secure the prospective purchasers positions at salaries greatly in excess of those earned on beginning the same, facts being it did not secure employment for purchasers when a portion of its courses had been completed, nor did it secure them positions upon completion of their studies at greatly increased salaries;
- (d) Represented that it would refund money paid for said courses to purchasers dissatisfied with training received, facts being that money-back agreement actually executed by it on sale of its courses specified that refund was conditioned upon written application by student within thirty days after receipt of diploma, and his failure to be entirely satisfied with service and instruction given, etc., and it was its practice, in many instances, to refuse diploma until after receiving purchaser's expression in writing of complete satisfaction, so as to rebut any possible claim within aforesaid period, and it did not return money paid to dissatisfied purchaser;
- (e) Represented that it had an advisory board of outstanding successful business men from nationally known firms who had assisted in preparing its courses and who would assist purchasers in their training and in securing employment, facts being many of such purported board members had no connection with it and none of them actively cooperated with purchasers as aforesaid, and their only service was in expressing approval of or preparing some particular portion of such courses;
- (f) Represented that it maintained a nation-wide employment service through which it was able to secure purchasers desirable positions at greatly

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increased salaries, facts being it did not maintain any employment service at all, other than contacting from time to time employers and endeavoring to place its purchasers with them; and

- (g) Made use of corporate name containing word "Association" and thus referred to itself, and to students and ex-students as "members", facts being it was not, as thereby understood, an association or union of persons for promotion of some common enterprise of mutual benefit, but a private corporation organized and conducted for profit and for the benefit of its stockholders, and purchasers of said courses, etc., did not become members of an association as thus understood;

With effect of misleading and deceiving prospective purchasers into believing that it was a union of persons for the promotion of some common enterprise of mutual benefit, and a substantial number thereof in respect to earnings, demand, refunds or guarantee, advisory board and employment service, and the nature of its business, and with result that many prospective purchasers bought its said courses of study, books, etc., in preference to those of competitors who do not use similar methods in securing purchasers, and of thereby diverting trade to it from its competitors, to their injury and that of the public:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Hurford & Feigenholtz, 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 the National Salesmen's Training Association, 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 public interest, it hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Salesmen's Training Association, is a corporation existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and has been for the several years last past, engaged in the sale and distribution of books, pamphlets, and other printed and written matter in connection with its courses in salesmanship and sales management which are conducted by correspondence, and causes said books, pamphlets, and other printed and written matter, when sales are made, to be shipped

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from its principal place of business in the city of Chicago, State of Illinois, into and across the several States of the United States, other than the State of Illinois, to the purchasers thereof located at various points in the said several States. In the course and conduct of its business, the respondent is and has been in substantial competition with other corporations and with individuals, partnerships, and associations engaged in the sale and distribution in said commerce of books, pamphlets, and other printed matter, in connection with courses by correspondence in salesmanship and sales management. The respondent and said other corporations and said individuals, partnerships, and associations are commonly known to the general public as correspondence schools.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, employs salesmen to solicit purchasers of its courses in salesmanship and sales management and the books, pamphlets, and other printed and written matter used in connection therewith, and advertises in numerous magazines its said courses in salesmanship and sales management and the books, pamphlets, and other printed and written matter used in connection therewith, and it sends to prospective purchasers booklets, pamphlets, circulars, and other printed and written matter containing statements concerning its said courses in salesmanship and sales management for the purpose and with the intent of inducing said prospective purchasers to purchase its said courses in salesmanship and sales management and the books, pamphlets, and other printed and written matter used in connection therewith.

PAR. 3. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, and by the use of the word in its corporate name, represents to prospective purchasers that it is an association, and that purchasers of its said courses in salesmanship and sales management and the books, pamphlets, and other printed matter used in connection therewith are members of the association. Prospective purchasers of courses by correspondence in salesmanship and sales management and of the books, pamphlets and other printed and written matter used in connection therewith understand the word "association" to mean a union of persons for the promotion of some common enterprise of mutual benefit to such persons, and understand the word "member" to mean a person who has joined a union for the promotion of some common enterprise which is for the mutual benefit of all the members. The use of the word "Association" and the word "member" or "members" by the respondent in the solicitation of prospective purchasers of salesmanship and sales management correspondence courses and the books, pamphlets, and other printed and

written matter used in connection therewith, leads said prospective purchasers erroneously to believe that the respondent is an "association", as that word is understood by such prospective purchasers, and that by the paying of the purchase price demanded by the respondent for said courses and the books, pamphlets and other printed and written matter used in connection therewith, that they will be and become members of an "association", as that term is understood by such prospective purchasers, and causes many prospective purchasers to purchase the respondent's said courses in salesmanship and sales management and the books, pamphlets, and other printed and written matter used in connection therewith because of such erroneous belief, when in truth and in fact the respondent is not an "association" as that word is understood by such prospective purchasers, but is a private corporation organized and conducted for profit and for the benefit of the stockholders therein, and is not a union of persons for the promotion of some common enterprise of mutual benefit to all of the members, and the purchasers of said courses in salesmanship and sales management and the books, pamphlets and other printed and written matter used in connection therewith do not become "members of an association", as that term is understood by such purchasers.

PAR. 4. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, falsely and fraudulently represents that the earning capacity of and the demand for said "members" is greatly in excess of the usual and ordinary earning capacity of and the usual and ordinary demand for said "members". In this connection, the advertisements in magazines and the booklets, pamphlets, circulars, and other printed and written matter used by the respondent in soliciting purchasers contain numerous statements to the effect that salesmanship is "the highest-paid profession in the world"; that more salesmen make "huge sums" than do men in other professions; that every year it "receives calls for many thousands of salesmen from manufacturers, wholesalers, jobbers, and sales organizations of every kind and description"; that "more salesmen are needed now than ever before"; that "the demand for salesmen is making manufacturers, wholesalers, etc., pay top salaries for salesmen who really know how to get profitable business economically"; and that "employers are willing to pay almost any reasonable salary to get a trained man". The said advertisements in magazines and in the booklets, pamphlets, circulars, and other printed and written matter contain many other false and misleading and exaggerated statements of similar import.

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In support of the false and fraudulent representations made by the respondent as to the earning capacity of and the demand for said "members" it circulates in said magazine advertisements and in said booklets, pamphlets, circulars, and other written and printed matter purported testimonials from "members" reciting the success achieved by each of said "members" as the result of his membership in and the training received from the so-called "association". One of the testimonials used extensively by the respondent was written by one L. Van Houten and is in part as follows:

Before I enrolled I thought \$50.00 per week was big money, but since I have enjoyed an income of better than \$900 per month.

Many other similar testimonials are used by the respondent, and in practically all instances the "members" purport to compare the huge sums earned after "enrolling as members" with the small sums received prior to that time. These testimonials are used by the respondent in such connection with the false and misleading representations made by the respondent, as above alleged, as to the earning capacity of and the demand for said "members" in such a manner as to mislead and deceive prospective purchasers of correspondence courses in salesmanship and sales management and the books, pamphlets, circulars, and other printed and written matter used in connection therewith, erroneously to believe that the statements made by the respondent as to the sums earned by said "members" and the testimonials of the "members" are true and that the sums mentioned as earnings are the usual and ordinary sums earned by said "members"; when in truth and in fact said sums so stated as being the earnings of said "members" are not the usual and ordinary earnings of "members" but are unusual and extraordinary and are earned by only a few.

The earnings as represented by the respondent and in said testimonials are not earnings which commonly result from becoming a "member" of the "association" but are the earnings resulting from special conditions which will not surround all of the "members".

PAR. 5. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, falsely and misleadingly represent to prospective purchasers of its courses and the books, pamphlets and other printed and written matter used in connection therewith, that it will refund to any "member" who is not satisfied the entire sum paid for tuition. In this connection, in its advertising in magazines and in the booklets, pamphlets, circulars, and other printed and written matter used by the respondent in soliciting purchasers, it makes the following statements and many others of similar import:

YOUR MONEY BACK IF YOU'RE NOT SATISFIED!

You must be entirely satisfied or your money cheerfully refunded. This is the broad ironclad Money Back Agreement the N. S. T. A. makes to every member who enrolls. And this legally binding guarantee is backed by the resources of this great million dollar corporation.

We must deliver exactly all we have promised or the training and service will not cost you a cent.

Results are the only thing that count! And if you are not entirely convinced that N. S. T. A. Training and Employment Service has been one of the most profitable investments of the time and money you have ever made, all you need do is to ask for your money back as provided in the Money Back Agreement—and YOU'LL GET IT—every penny of tuition paid. You see you are protected from start to finish. No chance to lose. No risk on your part in any way.

That's a remarkable guarantee—we know it! But, if the amazing successes of thousands of our other members are anything to go by, we feel that you too can enjoy this same big success, prosperity and independence and we do not hesitate to let you be the sole judge as to the worth and value of the training and service received.

Therefore, please bear this in mind: "YOUR MONEY BACK IF YOU'RE NOT SATISFIED!"—An important, additional reason for taking N. S. T. A. Training and Employment Service.

The representations above alleged lead many prospective purchasers erroneously to believe that the money paid by them to the respondent will be returned if they are not satisfied with the training received and the services rendered; for in truth and in fact respondent does not return to the so-called "members" the money paid for tuition if they are not satisfied, and the money-back guarantee referred to in said advertising matter contains many restrictions in regard to the securing of the return of the money paid, all of which are used by the respondent to defeat the efforts of a dissatisfied "member" in securing the return of the money he has paid the respondent. This money-back agreement is as follows:

The National Salesmen's Training Association will cheerfully refund the full amount of tuition paid if, upon fulfillment of terms of enrollment and sending written application to the National Salesmen's Training Association within thirty days after receiving his diploma, the member is not entirely satisfied with the service and instruction as given in his membership application, and if after availing himself of all training and service privileges he is not thoroughly convinced that the full value has been received.

and does not provide for the payment of "your money back if you're not satisfied".

PAR. 6. Respondent, in the course and conduct of its business and in the manner and by the means aforesaid, falsely and fraudulently represents to prospective purchasers of its said courses and the books, pamphlets, and other printed and written matter used in connection

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therewith that it has an "Advisory Board", consisting of outstanding successful business men connected with nationally known firms who have helped to make its courses practical and thorough and who have contributed valuable information, suggestions, and material with particular reference to the opportunities, problems, and practices in their own lines, and who have active interest in and cooperate with the "association", which guarantees the "members" a breadth of viewpoint in the application of selling principles and the support of thousands of big business firms. In connection with these representations, the respondent circulates, in its booklets, pamphlets, circulars, and other printed and written matter used in soliciting purchasers, an imposing list of some forty or fifty names of persons said to be holders of positions of importance with large, nationally-known, successful businesses, who are represented as being members of the advisory board.

The representations aforesaid and this list of names leads many purchasers erroneously to believe that the persons listed have actually assisted and advised respondent in the preparation of its courses in salesmanship and sales management and that they actually assist "members" by reason of their connection with the respondent, when in truth and in fact said persons have not assisted and advised respondent in the preparation of its courses and do not assist so-called "members" in any way by reason of their connection with the respondent.

PAR. 7. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, falsely and fraudulently represents to prospective purchasers that it maintains a nationwide employment service for the benefit of its "members". In some instances respondent's salesmen guarantee to prospective purchasers that respondent will secure employment for them at a salary in keeping with the representations made as to earnings as hereinabove alleged.

These representations lead many purchasers erroneously to believe that "membership" in the "association" assures them of a position with an unusually large salary as a result of respondent's nationwide employment service, when in truth and in fact respondent has no nationwide employment service nor does it secure all so-called "members" positions with unusually large salaries.

PAR. 8. Respondent's advertisements in their entirety contain many false and fraudulent representations not herein specifically alleged, but all of which mislead and deceive prospective purchasers in one or more of the respects hereinabove mentioned.

PAR. 9. The acts and practices of the respondent as hereinabove alleged have the tendency and capacity to and do mislead and deceive prospective purchasers and cause them to purchase respondent's

said books, pamphlets, and other printed and written matter sold and used in connection with its said courses in salesmanship and sales management in lieu and instead of the books, pamphlets and other printed and written matter used in connection with courses in salesmanship and sales management sold by its competitors, thereby diverting trade from its competitors to the respondent, to their injury and to the injury of the public.

PAR. 10. The above acts and practices of respondent are all to the prejudice of the public and of respondent's said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of 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 August 22, 1935, issued and served its complaint in this proceeding upon the respondent, National Salesmen's Training Association, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner for the Commission theretofore duly designated by it; thereafter the respondent, through its attorneys, Hurford & Feigenholtz, duly executed a stipulation as to the facts, which was subsequently approved by the Commission, wherein it was agreed that the said statement of facts and the evidence theretofore introduced might be taken as the facts in this proceeding in lieu of further testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon said statement of facts, and the testimony theretofore taken, to make its report stating its findings as to the facts, including inferences which it might draw from the said stipulated facts and the testimony theretofore taken, and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of

the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Salesmen's Training Association, is an Illinois corporation, with its place of business in the city of Chicago, and is now, and has been for the several years last past, engaged in the sale and distribution of courses of study in salesmanship and sales management by correspondence, and in the sale and distribution of books, pamphlets, and other printed matter used in connection with said courses of study. Respondent sells said courses of study to purchasers located at various points in the several States of the United States and ships said courses of study and the books, pamphlets, and other printed matter used in connection therewith from its place of business in Chicago, Ill., to the purchasers thereof located at said various points in the several States of the United States. Respondent has been, and is, in substantial competition with other firms who are engaged in the sale and distribution, in commerce between and among the several States of the United States, of similar courses of study and books, pamphlets, and other printed matter used in connection therewith. Many of said competitors of the respondent do not use the methods used by the respondent, as hereinafter set out, in securing purchasers for their said courses of study and the books, pamphlets, and other printed matter used in connection therewith.

PAR. 2. The respondent contacts prospective purchasers of its said courses of study through salesmen and through advertisements placed in magazines and, when an inquiry is received from a prospective purchaser as a result of personal contact made by its salesmen, or as a result of magazine advertisements, it mails, or has its salesmen deliver, to such prospective purchaser a booklet, copy of which is in the record as Commission's Exhibit No. 1, which contains statements concerning said courses of study intended and calculated to induce prospective purchasers to purchase said courses of study.

PAR. 3. The respondent, through said printed advertising matter and through said salesmen, has represented, and does represent, to prospective purchasers of its said courses of study that the earning capacity of salesmen who have completed said courses of study is greatly in excess of the usual and ordinary earning capacity of such salesmen, and it has represented, and does represent, that the demand from employers of salesmen for salesmen who have completed said courses of study is greatly in excess of the demand for such

salesmen. In this connection, respondent, in its said booklet, Commission's Exhibit No. 1, makes exaggerated statements concerning the earning capacity of, and the demand for, salesmen trained by it, such as "salesmanship is the highest paid profession in the world", that more salesmen make "huge sums" than do men in other professions, that every year it "receives calls for many thousands of salesmen from manufacturers, wholesalers, jobbers, and sales organizations of every kind and description", and that "more salesmen are needed now than ever before". Many other exaggerated statements of similar import are likewise made by the respondent. Respondent also uses, in said booklet, testimonials from purchasers who have completed said courses of study which contain statements purporting to show their increased earnings as a result of having studied said courses of study in such a manner as to lead prospective purchasers to believe that the increased earnings mentioned are the usual and ordinary earnings of those who have studied said courses of study and the usual and ordinary earnings that such prospective purchasers will receive upon completion of said courses of study. In truth and in fact, said earnings mentioned in said statements of purchasers who have completed said courses of study are not the usual and ordinary earnings of salesmen trained by the respondent, but are unusual and extraordinary and represent the earnings of only a few resulting from special conditions which will not surround a majority of persons completing said courses of study.

The representation is made to prospective purchasers by respondent's salesmen that upon completion of a portion of said courses of study they may expect a large increase in their earning capacity, and that, upon completion thereof, the respondent will secure for them positions at salaries greatly in excess of those being earned by such prospective purchasers at the time they begin said courses of study. Respondent's salesmen further represent that it is unable to supply the demand from employers of salesmen for salesmen trained by it and that there will be no delay in placing the prospective purchasers in positions as soon as they have completed a sufficient portion of said courses of study to qualify as salesmen. In truth and in fact, it does not secure employment for purchasers when a portion of said courses of study have been completed, neither does it carry out the promises made by its salesmen to secure positions for purchasers upon completion of said courses of study at salaries greatly in excess of those being received at the time such purchasers began said courses of study, nor are the demands made upon the respondent by employ-

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ers of salesmen for salesmen who have completed said courses of study greater than it can supply.

PAR. 4. The respondent, in said booklet, Commission's Exhibit No. 1, and through its salesmen, represents to prospective purchasers of its said courses of study that it will return to any purchaser who is not satisfied with the training received the money paid for said courses of study. In this connection, the respondent makes the following statements concerning its money-back guarantee:

YOUR MONEY BACK IF YOU'RE NOT SATISFIED!

You must be entirely satisfied or your money cheerfully refunded. This is the broad iron-clad Money Back Agreement the N. S. T. A. makes to every member who enrolls. And this legally binding guarantee is backed by the resources of this great million dollar corporation.

We must deliver exactly all we have promised or the training and service will not cost you a cent.

Results are the only thing that count! And if you are not entirely convinced that N. S. T. A. Training and Employment Service has been one of the most profitable investments of time and money you have ever made, all you need do is to ask for your money back as provided in the Money Back Agreement—and YOU'LL GET IT—every penny of tuition paid. You see you are protected from start to finish. No chance to lose. No risk on your part in any way.

That's a remarkable guarantee—we know it! But, if the amazing successes of thousands of our other members are anything to go by, we feel that you too can enjoy this same big success, prosperity and independence and we do not hesitate to let you be the sole judge as to the worth and value of the training and service received.

Therefore, please bear this in mind: "YOUR MONEY BACK IF YOU'RE NOT SATISFIED!"—An important, additional reason for taking N. S. T. A. Training and Employment Service.

The money-back agreement actually executed by the respondent when said courses of study are sold is as follows:

The National Salesmen's Training Association will cheerfully refund the full amount of tuition paid if, upon fulfillment of terms of enrollment and sending written application to the National Salesmen's Training Association within thirty days after receiving his diploma, the member is not entirely satisfied with the service and instruction as given in his membership application, and if after availing himself of all training and service privileges he is not thoroughly convinced that the full value has not been received.

The respondent, in many instances, has refused, and does refuse to issue its diploma to purchasers of said courses of study until after it has received from such purchasers an expression, in writing, of complete satisfaction with the training received, which is used to rebut any claim, made within thirty days after receipt of a diploma, of a lack of satisfaction with the training received. In truth and in fact, the respondent has not returned, and does not return, to a pur-

chaser of said courses of study who is not satisfied with the training received the money such purchaser paid it for said courses of study.

PAR. 5. The respondent, in its said booklet, Commission's Exhibit No. 1, and through said salesman, represents that it has an advisory board consisting of outstanding successful businessmen connected with nationally known firms who assist it in making its said courses of study practical and thorough and who have contributed valuable information, suggestions and material to said courses of study, and it represents that these advisors actively cooperate with and assist purchasers of said courses of study in their training and in securing employment upon completion of said courses of study. In truth and in fact, many of the so-called members of said advisory board have no connection with, or interest in, the respondent or purchasers of said courses of study, and none of them actively cooperate with and assist purchasers of said courses of study in their training and in securing employment upon completion of said courses of study, and the only service that any of said advisors has rendered, or does render, is to express approval of, or to prepare, some particular portion of said courses of study of the respondent.

PAR. 6. The respondent, in its said booklet, Commission's Exhibit No. 1, and through its salesman, represents that it maintains a nationwide employment service for the benefit of purchasers of its said courses of study through which it is able to secure for such purchasers desirable positions at salaries greatly in excess of those earned prior to the time of the purchase of said courses of study. In truth and in fact, respondent does not maintain a nationwide employment service, or any employment service at all, other than it does from time to time contact distributors, manufacturers and firms who employ salesman either on a commission or a salary basis and does endeavor to place purchasers of said courses of study in contact with such organizations, but it has not secured, and does not secure, desirable positions at greatly increased salaries for purchasers of said courses of study through any employment service.

PAR. 7. Respondent, in its advertising matter, uses its corporate name containing the word "association" and refers to itself as an "Association" and to its students and ex-students as "Members". Many prospective purchasers of respondent's said courses of study in salesmanship and sales management and the books, pamphlets and other printed matter used in connection therewith, understand the word "Association" to mean a union of persons for the promotion of some common enterprise of mutual benefit to such persons and understand the word "Member" to mean a person who has joined a union for the promotion of some common enterprise which is for the

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mutual benefit of all the members. In truth and in fact the respondent is not an association as that word is understood by said prospective purchasers, but it is a private corporation organized and conducted for the profit and for the benefit of the stockholders therein and it is not a union of persons for the promotion of some common enterprise of mutual benefit to all of the members and purchasers of said courses in salesmanship and sales management and the books and other printed matter used in connection therewith do not become members of an association as that term is understood by such purchasers. The use of the word "association" in its corporate name and the words "Association" and "Members" by the respondent in its advertising matter misleads and deceives purchasers of its courses of study in salesmanship and sales management and the book, pamphlets, and other printed matter used in connection therewith, and causes them to believe that it is a union of persons for the promotion of some common enterprise of mutual benefit.

PAR. 8. The aforesaid acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive a substantial number of prospective purchasers and cause them erroneously to believe that the earning capacity of, and the demand for, persons who have completed its said courses of study are greatly in excess of the earning capacity of, and the demand for, such persons; that the statements in said testimonials from purchasers of said courses of study as to their increased earnings as a result of having studied said courses of study are the usual and ordinary earnings of salesmen trained by the respondent; that purchasers will receive a large increase in earnings upon the completion of a portion of said courses of study and that upon completion of said courses of study the respondent will secure for them positions at salaries greatly in excess of those being earned prior to the time said courses of study were purchased; that the respondent will return to any purchaser who is not satisfied with the training received the money paid for said courses of study; that the respondent has an advisory board consisting of outstanding successful business men from nationally known firms who have assisted the respondent in preparing said courses of study and who will assist purchasers of said courses of study in their training and in securing employment; that the respondent maintains a nationwide employment service for the benefit of the purchasers of said courses of study through which they will secure positions at salaries greatly in excess of those earned prior to the time they purchased said courses of study; and that the respondent is a union of persons for the promotion of some common enterprise of mutual benefit; and many of said prospective purchasers, because of said erroneous beliefs, purchase re-

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spondent's said courses of study and the books, pamphlets and other printed matter used in connection therewith in preference to similar courses of study and the books, pamphlets, and other printed matter used in connection therewith sold by its competitors who do not use similar methods in securing purchasers for their said courses of study and the books, pamphlets and other printed matter used in connection therewith, thereby diverting trade from its competitors to the respondent to their injury and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the stipulation as to the facts, and the testimony in support of the complaint, 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, National Salesmen's Training Association, a corporation, its officers, agents, representatives, and employees, in connection with the sale, offering for sale, and distribution in interstate commerce or in the District of Columbia of its courses of study in salesmanship and sales management, and the books, pamphlets, and other printed matter used in connection with such courses of study, cease and desist:

1. From representing expressly or by implication that the earnings of persons studying or who have completed its said courses of study are greater than their usual and ordinary earnings under normal conditions;

2. From representing expressly or by implication that the demand from employers of salesmen for persons studying or who have completed its said courses of study exceeds the demand that actually exists at the time the representation is made;

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3. From using in its printed advertisements or otherwise testimonials from persons who have studied or completed its said courses of study which contain statements as to increased earnings attributed to said courses of study, but which were not in fact earned under normal conditions;

4. From representing expressly or by implication that it will secure for purchasers of its said courses of study positions at greatly increased salaries upon completion of a part or all of its said courses of study;

5. From representing expressly or by implication that it will refund the purchase money paid for its said courses of study to purchasers who are not satisfied with the training received, unless and until it actually does make such refunds without imposing additional conditions;

6. From representing expressly or by implication that it has an advisory board of outstanding, successful business men from nationally known firms who have assisted it in preparing its said courses of study and who will assist purchasers of said courses of study in their training and in securing employment, when it has no such advisory board;

7. From representing expressly or by implication that it has and maintains a nationwide employment service.

8. From representing expressly or by implication, through the use of the word "association" in its corporate name or through the use of the words "association" and/or "members" in its advertising matter, or otherwise, it is an association composed of student members.

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

Syllabus

IN THE MATTER OF
BLACKWELL JOURNAL PUBLISHING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2456. Complaint, June 24, 1935—Decision, Sept. 5, 1936*

Where a corporate newspaper publisher engaged in selling its daily regularly to persons within and without State, pursuant, chiefly, to subscriptions, and in soliciting and securing both local and national advertising and advertisers, and in inserting and carrying the respective advertisements of merchants, manufacturers, and others thus solicited and located in its city and vicinity and that of those who, located in other States, advertise their goods in various parts of the country, and by reasons of, (1) out-of-State advertising contracts thus solicited and secured and resulting out-of-State shipments of cuts, electrotypes, stereotypes, mats, and textual copy for the make-up and publication of advertisements involved, and, (2) shipments of its papers to out-of-State subscribers, source and destination of a course of trade and commerce in and through the various States from and to it, and dependent primarily upon advertising income for support of the enterprise and deriving a substantial, but not greater, proportion of its income from national advertising and advertisers, accustomed to select newspaper preferred by local advertisers as having "local acceptance"—

- (a) With intent to destroy a theretofore long-established, similarly situated and engaged competitor in its said city, and with capacity and tendency so to do and to give it a monopoly in the territory and business involved and in out-of-State sales, subscriptions, and advertisements, regularly quoted and charged advertising rates substantially below cost to it of setting up and publishing such advertisements and below cost at which its said competitor had been and was able to set up and publish its advertisements, with result that during two-year period of its existence involved, loss from publication, financed by ostensible loans, equalled about ninety-five percent of its capital, and said competitor was thereby forced to publish its newspaper and its advertisements at a substantial and continually increasing loss;
- (b) With intent, capacity, and tendency to cause subscribers to fail and refuse to continue to subscribe to said competitor's paper and to prevent others from subscribing, made false and disparaging statements to such competitor's subscribers and prospective subscribers relative to its financial condition and strength and its ability to continue to publish its paper, including statements, in substance, that it was in a failing financial condition and heavily indebted, and that one of several individuals, who financed by such ostensible loans its said losses, and who had no financial or stockholder interest in itself, but were personally and politically hostile to the editor-owner of said competitor, had acquired evidences of its indebtedness and would soon "close out" such competitor, and that it would be out of existence before another subscription period would expire, and that its, i. e., said corporation's, paper was being conducted at a loss for the purpose of "breaking" said competitor and that latter could not "hold out on that kind of competition"; and

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(c) With intent and tendency to cause subscribers of said competitor to cease subscribing to such competitor's paper, offered subscriptions for substantial periods to its own paper to subscribers to the other, without cost, in case of some, and, in that of others, at an unreasonably low price;

With result that there was a tendency to destroy such competitor, and to give it a monopoly in publication of a newspaper and advertisements in territory served by it and said competitor, to interfere with and burden interstate commerce and shipment of newspapers and of electrotypes, stereotypes, mats, and textual copy in interstate commerce, and to deprive the public of benefit of competition in publication of advertisements in territory involved:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Long, St. Lewis & Nyce, of Washington, D. C. and *Mr. Ned Looney* and *Mr. Edgar Fenton*, of Oklahoma City, Okla., 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 having reason to believe that the Blackwell Journal Publishing Company, a corporation, 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business at Blackwell, in said State.

PAR. 2. Respondent is, and for the past two years has been engaged in the publication at Blackwell of a daily newspaper known and designated as the Blackwell Daily Journal. A substantial number of the copies of said newspaper have been and are regularly sold to persons residing outside the State of Oklahoma and, pursuant to such sales and as a part thereof, shipment of said papers is made from respondent's place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are sold under and pursuant to contracts, commonly known as subscriptions, for definite periods of time, varying from one week to one or more years.

PAR. 3. Located also at Blackwell is the Blackwell Tribune Publishing Company, hereinafter referred to as the Tribune, a corporation

engaged now, and for the past fifteen years, in the publication of a daily newspaper known and designated as The Blackwell Morning Tribune. A substantial number of the copies of said newspaper have been and are regularly sold to persons residing outside the State of Oklahoma, and, pursuant to such sales and as a part thereof, shipment of said papers is made from its place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are sold under and pursuant to contracts, commonly known as subscriptions, for definite periods of time, varying from one week to one or more years.

PAR. 4. In connection with the publication of their respective newspapers, respondent and the Tribune solicit merchants, manufacturers, and others desiring to offer their goods to the public, to purchase advertising space in said newspapers, for which they quote rates based upon the number of inches of space used, the rate of charge differing where there is a single insertion of such advertisement or a limited number of insertions, at the option of the advertiser, and where a definite amount of space is contracted for to be used by the advertiser over a definite period. Advertising is further divided into "national" advertising, done by manufacturers, merchants, and others located in States other than Oklahoma and who offer their goods in various parts of the United States, and "local" advertising, done by those located in Blackwell and vicinity. The principal source of income to respondent and to the Tribune has been and is this sale of advertising space in their respective newspapers, and in the solicitation of and obtaining such business and in the securing of subscriptions to and sales of their newspapers respondent and the Tribune have been and are in active, substantial competition.

PAR. 5. In connection with and pursuant to the advertising contracts made by respondent and the Tribune with national advertisers, there are shipped to them by said advertisers from outside the State of Oklahoma, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing said advertisements.

PAR. 6. In the course of its business of publishing said daily newspaper and of soliciting and securing purchasers of advertising space therein respondent has regularly sold, and is regularly selling, such advertising space at a price or charge substantially below the cost to respondent of setting up and publishing the advertisements therein, and substantially below the cost at which the Tribune can and does set up and publish the same and similar advertisements in its newspaper, thus forcing the Tribune either to forego this part of its business or to operate at no profit or at a loss.

PAR. 7. In soliciting subscriptions to its said newspaper respondent has falsely stated and represented to subscribers and prospective subscribers to the Tribune's newspaper that the Tribune was on the verge of financial failure and would soon be forced to cease the publication of its paper and that subscribers thereto would lose all or the greater part of the money paid by them to the Tribune for subscriptions. Respondent has further sought to deprive the Tribune of its subscribers by offering them its own paper without charge for the remaining term of the subscriptions to the Tribune's newspaper on the condition that they thereafter subscribe only for respondent's paper.

PAR. 8. In fixing its rates and charge for advertising space below a profitable return, and in making false and disparaging statements of and concerning the Tribune's financial condition and in endeavoring to deprive the Tribune of its subscribers, all as aforesaid, it has been and is the purpose and intent of respondent to force the Tribune out of business in Blackwell and vicinity and the other territory covered and served by it and respondent, and thereby gain a monopoly of the newspaper business and the publication of advertisements in such territory.

PAR. 9. The practices of respondent hereinabove set forth result and have resulted in substantial injury to its said competitor, the Tribune; have directly burdened and interfered with, and continue to burden and interfere with, interstate commerce; tend to create in respondent a monopoly of that line of commerce in that locality; prejudice the public interest and constitute unfair methods of competition in commerce within the intent and meaning of the act of Congress hereinabove entitled.

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 on respondent, Blackwell Journal Publishing Company, a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent filed answer, and hearings were convened and had before a duly qualified examiner of the Federal Trade Commission. At the commencement of said hearings, before the introduction of any evidence, the respondent objected to the introduction of evidence on behalf of the Commission upon the ground that none of the acts

alleged in said complaint constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress above entitled, and that the Federal Trade Commission is without jurisdiction to hear and determine the cause in that the acts alleged in the complaint as unfair practices do not constitute commerce as contemplated by said act.

This objection was overruled, to which ruling the respondent noted an exception.

Thereupon, and thereafter, evidence was introduced in support of the complaint and respondent offered and introduced evidence in defense of the charges. Thereafter, briefs were filed in support of the complaint and by respondent. Oral argument was waived by respondent.

And now the Commission having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Blackwell Journal Publishing Company, is, and has been since sometime prior to June 1, 1933, a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, with its principal place of business at Blackwell, in said State.

PAR. 2. Respondent is, and has been since June 1, 1933, engaged in the publication of a daily newspaper known as "The Blackwell Daily Journal," its first issue appearing June 11, 1933. Approximately ten percent of the number of copies of said newspaper sold are and have been regularly sold to persons residing outside of the State of Oklahoma, and pursuant to such sales, and as a part thereof, shipment of said papers is and has been made from respondent's place of business at Blackwell to said purchasers. The greater proportion of the copies of said newspaper are and have been sold, both within and without the State, under and pursuant to contracts, known as "subscriptions," for definite periods of time, varying from one week to one or more years.

PAR. 3. Located also at Blackwell during all the time above mentioned and for more than ten years prior thereto, was and is the Blackwell Tribune Publishing Company, a corporation, engaged in the publication of a daily newspaper known as "The Blackwell Morning Tribune." Approximately six percent of the number of the copies of said newspaper sold have been and are regularly sold to persons residing outside the State of Oklahoma, and pursuant to such sales, and as a

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part thereof, shipment of said paper is and has been made from its place of business at Blackwell to said purchasers. The greater proportion of the said papers are sold, both within and outside the State, under and pursuant to contracts, known as "subscriptions", for definite periods of time, varying from one week to one or more years. For convenience said newspaper and corporation will be hereinafter referred to as the "Tribune." No other newspaper, except respondent's, is now, or during the time since the establishment of respondent's paper has been, published in Blackwell, and no daily paper nearer than twenty miles. In soliciting and securing subscriptions to their respective newspapers, respondent and the Tribune have been and are in active, substantial competition.

PAR. 4. In connection with the publication of their respective newspapers, respondent and the Tribune solicit and secure, and have solicited and secured, merchants, manufacturers, and others desiring to offer their goods to the public, to insert and carry advertisements in said newspapers, for which service the respondent and the Tribune quoted and charged rates based upon the number of column-inches of space used. Among such advertising and advertisers were and are what is known in the newspaper business as "national" advertising and advertisers, that is, advertising done by manufacturers, merchants, and others located in States other than Oklahoma and who advertise their goods in various parts of the United States, as distinguished from "local" advertising and advertisers, advertising by those located in Blackwell and vicinity. In seeking and securing such advertising business the respondent and the Tribune have been and are in active, substantial competition.

PAR. 5. In connection with and pursuant to the advertising contracts made by respondent and by the Tribune with national advertisers, there are and have been shipped to them by said advertisers, from outside the State of Oklahoma, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing said advertisements. So that in soliciting and securing subscriptions to their respective newspapers from and in shipping said newspapers to, subscribers located in States other than the State of Oklahoma, and in entering into contracts with national advertisers located outside the State of Oklahoma, resulting in the shipping of said cuts, electrotypes, stereotypes, mats, and textual copy, there exists and has existed a course of trade and commerce among and through various States of the Union, from and to respondent and from and to its said competitor.

PAR. 6. The sources of income of newspapers, of the class and size of the respondent's and its said competitor's newspapers, are two—from "circulation", that is, sale of newspapers, and from the publication of

advertisements. In the case of newspapers of the class and size of respondent's and its said competitor's newspapers, the proportion of income from each source to the total income is substantially uniform and constant, and being from 20% to 30% from circulation and 80% to 70% from publication of advertisements. The income from circulation is expected to do, and does, no more, or little more, than to cover the expense of the circulation department. In the two years following the establishment of respondent's paper, its income from circulation was 28½% of its total income and from advertisements 71½%. Its circulation department expense has been more than twice its circulation income.

A substantial part of respondent's and its competitor's income is and has been from national advertisers and advertising, but the greater proportion is from local advertisers and advertising. The amount of local advertising secured and carried by a newspaper directly affects its appeal as a medium for national advertising, in that national advertisers are wont to select the newspaper which has "local acceptance", that is, that is preferred by local advertisers.

PAR. 7. The primary purpose or object in the conduct of the various departments of a newspaper of the class and size of respondent's and its said competitor's newspapers is to increase the value of the newspaper as an advertising medium. Such departments consist of current news, editorials, market reports, and other special features. The number of subscribers is also a material element of its value as an advertising medium.

PAR. 8. The cost of setting up and publishing advertisements in newspapers of the size and class of respondent's and its competitor's newspapers consists of the entire expense of conducting the newspaper, except the circulation expense, which is met by income from circulation.

PAR. 9. From the time of the first issue of its said newspaper by respondent up to and including the time of the closing of hearings in this matter, the respondent has regularly quoted and charged rates for advertising in its said paper substantially below the cost to it of setting up and publishing such advertisements, so that it has not only failed to make any profit from the publication of its newspaper and the securing and publishing of advertisements therein, but has, throughout the whole of said period of time, published said newspaper and set up and published advertisements therein at a substantial loss, amounting in said two years of its existence to approximately \$94,500, or 94½% of its capital, and at the time of the close of hearings herein said loss was continuing.

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During the first approximately six months of the publication of respondent's newspaper, ended December 31, 1933, the cost of setting up and publishing advertisements therein was \$24,686.09, while its charge therefor resulted in an income of \$5,867.45; during the year 1934, the cost was \$55,117.10 and income \$16,348.26; and during the six months ended June 30, 1935, the cost was \$31,667.57, income \$10,992.21. During the same respective periods the relation of expense and income in the circulation department was: 1933, expense \$7,505.02, income \$3,842.35; 1934, expense \$12,589.14, income \$5,271.81; 1935, expense \$10,117.84, income \$4,119.81.

PAR. 10. The rates for advertising so quoted and charged by respondent have been and are below the cost at which its said competitor has been and is able to set up and publish advertisements in its said newspaper, so that during the whole time of the existence of respondent's paper its said competitor has been forced by the competition of respondent's said rates to publish its newspaper and to publish advertisements therein at a substantial, continually increasing loss.

For the period June 1 to December 31, 1933, the Tribune's income from advertisements was \$38,227.77 and its expense, less expense of its circulation department, was \$48,445.69, a loss of \$10,217.92. Its total operating loss for the period was \$5,723.88. For the year 1934, income from advertising was \$59,254.83, and its expense, less expense of the circulation department, was \$81,146.03, a loss of \$21,891.20. Its total operating loss for the year was \$12,111.61. For the year 1935 up to June 30, its income from advertising was \$29,006.82, and its expense, less expense of its circulation department, was \$40,790.00, a loss for the six months of \$11,783.18. Its total operating loss for the six months was \$7,814.35.

Comparing the number of column-inches of advertising carried by the Tribune and the income therefrom, for the five months preceding establishment of respondent's newspaper and for the seven months following its establishment, it appears that while the number of column-inches of advertising carried by the Tribune increased by 60%, its gross income therefrom increased by only 55%.

PAR. 11. Respondent's intent and purpose in quoting rates for advertising below the cost to it of setting up and publishing the same and below the cost at which its said competitor is able to set up and publish advertising in its paper, and the capacity and tendency of same, has been and is to destroy its said competitor with the result of giving respondent a monopoly, in the territory served by respondent and its competitor, of the publication of a newspaper and of the publishing of advertisements in said territory.

The only sources of income open to respondent in the publishing of its newspaper, were and are circulation and advertising. It could not gain an income from circulation substantially greater than that necessary to meet the expenses of its circulation department. All other expenses of conducting its newspaper, and all income to create a profit in its operations must come from advertising.

From the time of the first issue of its newspaper until the close of hearings in this case, the rates quoted and charged by respondent would and did produce an income lower than necessary to meet its expenses after deducting the expense of its circulation department. The rate quoted and charged during period from June 11 to July 11, 1933, was 42¢ to 27¢ per column-inch, depending upon the amount of space used by the advertiser. On July 11, 1933, it dropped its rate to 18¢ per inch and from that date to November 1, 1933, it was fixed at 1¢ per inch for each 100 subscribers. On November 1, the rate had risen to 34¢, when it was dropped to 15¢ per column-inch, and at the end of November respondent received an installment of \$8,000 of the loan hereinafter referred to in paragraph 12. This 15¢ rate continued up to August 1, 1935.

At the time of establishment of respondent's newspaper its competitor, the Tribune, was quoting and charging a rate of 62¢ to 40¢ depending upon the amount of space used. On June 14 it offered a 20% discount on this rate for any month the Tribune was used exclusively by advertisers. The rate actually received during this period was an average of 58¢. From January 29, 1934, to May 1, 1935, the Tribune's rate averaged about 37¢. On May 1, 1935, the Tribune raised its rates to 50¢ and 35¢ depending upon the amount of space used. Respondent however continued its 15¢ per inch rate until August 1, 1935, when it was raised to 42¢ to 25¢ depending upon the amount of space used.

For the 20 days of June 1933, following the first issue of respondent's newspaper it carried over half as much advertising as the Tribune carried for the full month. During the next month, July, respondent increased its advertising by 589 column-inches while its competitor increased 620 inches. In August respondent lost 547 inches as compared with July while its competitor lost 457 inches, respondent holding its relative position in the face of an increase of its rates during the month from 19½¢ to 24¢ while its competitor's rates remained constant at 62¢ to 40¢ with 20% discount for any month in which the Tribune was used exclusively as the merchant's advertising medium. During September respondent carried increased advertising to the extent of 10% over August while its competitor increased 90%. In October, the month preceding respondent's drop

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to 15¢ per column-inch, respondent lost about 41% as compared with the preceding month and its competitor lost 46%. Therefore, the respondent, during the first 5 months of its existence, starting with a circulation of nothing and an average for the period of only 32% of its competitor's circulation, carried 48% of the total amount carried by the Tribune during that period.

During the period from November 1, 1933, to August 1, 1935, respondent's circulation gradually increased from an average of about 2,825 to 6,670 subscribers. During this same period its competitor's circulation dropped from about 8,344 subscribers to about 7,600.

PAR. 12. The losses sustained by respondent in the conduct of its newspaper and in setting up and publishing advertisements therein, as hereinabove found, have not been met out of its capital or other resources but have been met by money advanced, ostensibly in the form of loans, by three persons not stockholders or otherwise financially interested in the respondent corporation.

One of these men was a lawyer residing at Blackwell, another an oil operator residing at Ponca City, Okla., and the third an oil operator residing at Blackwell. These two towns are about seventeen miles apart, connected by three paved roads, and they, and their respective merchants, are rivals in an extensive, common trade territory.

E. M. McIntyre was, and is, the sole stockholder in respondent corporation. Soon after the establishment of its newspaper, the above named three men advanced to McIntyre, in the form of a loan for use in connection with the running of the newspaper, the sum of \$40,000, each one of the three contributing one-third of the amount. This loan was made without inquiry as to McIntyre's financial responsibility, and no security was given by him except the pledge of his stock in the respondent corporation. McIntyre paid no money or other thing for his stock, and at no time contributed money to the corporation or for the conduct of the newspaper.

Thereafter and up to June 30, 1935, the last two of the three men referred to above, advanced to McIntyre in the form of loans additional amounts in monthly installments of from \$2,000 to \$8,000, until on May 25, 1935, the aggregate amount, including the first \$40,000, was \$117,400. No security other than the pledge of McIntyre's stock was given for the additional \$77,400. One of the two personally handed McIntyre some part of this sum each month throughout the period.

For a number of years prior to the establishment of respondent's newspaper, the editor of the Tribune, who owned 90% of its stock, and one of these two men had been on opposite sides of the question whether the city of Blackwell should sell its municipally-owned gas plant.

During this time there was a bitter controversy between them, recurring at each city election. Editorials in the Tribune had bitterly attacked the other and he, through circulars, had replied in the same vein. In the last four or five years the ill-feeling between them had been augmented by the Tribune championing the city's rights in the matter of the pollution of its water supply by a number of oil operators, among them this creditor of respondent, and the Tribune had printed a number of editorials directed against him and his partner.

Personal relations between the editor of the Tribune and the other of the two men were even more antagonistic. They were on opposite sides of a number of State political questions, the editor had been active in an attempt to oust him from a State office, had testified against him in a State investigation of his conduct of this office, and during this time he had made the threat that he would get even with the Tribune's editor. This controversy brought forth a number of editorials in the Tribune attacking him.

PAR. 13. During the conduct of its said newspaper in competition with its said competitor, respondent has made false and disparaging statements to subscribers and prospective subscribers to the Tribune, of and concerning the financial condition and financial strength of its said competitor and concerning its ability to continue to publish its said newspaper, in substance that the Tribune was in a failing financial condition; that the Tribune was heavily indebted and that one of the persons referred to in paragraph 12 hereof had acquired the evidences of such indebtedness and would soon "close out" the Tribune; and that the Tribune would be out of existence before another subscription period would expire. Representatives of respondent, in the course of soliciting subscriptions to respondent's paper, also spread the report among subscribers and prospective subscribers to the Tribune that respondent's paper was being conducted at a recurring monthly loss for the purpose of "breaking" the publisher of the Tribune, and that the Tribune could not "hold out on that kind of competition." The purpose, capacity and tendency of the making of such statements has been and is to cause subscribers to fail and refuse to continue to subscribe to the Tribune and to prevent others from subscribing.

PAR. 14. In the course and conduct of the publication of its said newspaper, respondent has offered subscriptions, for substantial periods to its newspaper to subscribers to the newspaper of its competitor, in some cases without cost, and in other cases at an unreasonably low price, for the purpose of causing, and with the tendency to cause, said persons to cease subscribing to its competitor's newspaper.

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PAR. 15. The result of the methods of competition which have been used by respondent, as hereinabove found and set forth, has been and is to tend to destroy its said competitor; to give respondent a monopoly in the publication of a newspaper and of advertisements in the territory served by respondent and its said competitor; to interfere with and burden interstate commerce in the shipment of newspapers and of electrotypes, stereotypes, mats, and textual copy in interstate commerce; and to deprive the public of the benefits of competition in the publication of advertisements in said territory.

CONCLUSION

The acts and practices of the respondent, under the circumstances hereinabove found and set forth, have been and are to the injury of respondent's competitor, and prejudicial to the public interest, and constitute unfair methods of competition in 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 being before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the evidence taken and received, and the briefs of counsel for the Commission and for the respondent;

And the Commission having made its report in writing stating its findings as to the facts and its conclusion therefrom that respondent has been and is violating 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 respondent, the Blackwell Journal Publishing Company, a corporation, its agents, employees and representatives forthwith cease and desist from:

1. Making and circulating false disparaging statements of and concerning the financial condition and responsibility of its competitor or competitors;
2. Offering to newspaper subscribers of its competitor or competitors subscriptions to respondent's newspaper without cost;
3. The practice of quoting or charging rates, for setting up and publishing advertisements, which are below the cost thereof to respondent;

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for the purpose of injuring, a competitor, or those competitors, of respondent whose newspapers circulate in interstate commerce or who solicit and secure contracts for setting up and publishing advertisements, from persons located outside the State of Oklahoma, which contracts contemplate and cause the shipment of cuts, electrotypes, or other property into said State.

It is further ordered that within 30 days from the date of the service of this order upon respondent, it shall file with the Commission a report in writing, setting forth in detail the manner and form in which it shall have complied with this order.

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IN THE MATTER OF
THE ABORN HAT MANUFACTURING COMPANY

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

Docket 2499. Complaint, July 18, 1935—Decision, Sept. 12, 1936

Where a corporation engaged in manufacture of new men's hats from new felts and of men's made-over felt hats from previously worn and discarded hats purchased by it from concerns dealing in such articles, through process involving their dry cleaning, blocking, shellacing, powdering, and dyeing, as necessary, and re-equipment with new sweat leathers, ribbons, and linings with customary or typical stamping of designs or names such as "Quality," "Colonial," "Wellington," etc., brought from regular dealers in such various trimmings, and in sale of said processed, new appearing products direct to the trade and through salesmen—

Sold and invoiced said hats as "seconds" or "specials," with no word or mark thereon to indicate their made-over character, at substantially lower prices than charged by manufacturers of the necessarily more costly new products to jobbers, and to retailers, of whom some did not know their made-over character, and of whom some sold same to purchasers as new, or reconditioned new hats, and of whom some did not advise their purchasers as to said hats' nature except upon inquiry as to reason for their cheap price, in which event customer was advised hat was reconditioned new one;

With result of enabling jobbers, and latter's retailer customers, to sell said hats thus made, equipped, and sold, to such merchants and to purchasing public, respectively, as and for new articles, and with capacity and tendency to induce many retailers and many of purchasing public to buy said renovated and made-over, second-hand, old, theretofore used and discarded hats, indistinguishable from new and unused articles by ordinary purchaser at retail, as and for such articles, and with effect of unfairly diverting trade to it from concerns engaged in manufacture and sale of new hats throughout the various States, and from competitors engaged in sale of such renovated products, and who label, tag, and otherwise indicate thereon their renovated and not new nature; to the substantial injury of competitors in interstate commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. George Foulkes for the Commission.

Mr. James A. O'Callaghan, 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

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Federal Trade Commission, having reason to believe that the Aborn Hat Manufacturing Co., 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:

PARAGRAPH 1. Respondent, Aborn Hat Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. It is now and for more than two years last past has been engaged in the business of renovating second-hand, old, used, and discarded men's felt hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof, located in the various States of the United States. It now causes and for more than two years last past has caused such second-hand, old, used, and discarded felt hats, when renovated by it, to be transported from its place of business in Chicago to the aforesaid purchasers thereof, located in the State of Illinois and to other of the aforesaid purchasers located in various other States of the United States; and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in said renovated second-hand, old, used, and discarded men's felt hats. In the course and conduct of its business, respondent is now and for more than two years last past has been engaged in substantial competition in commerce between and among the various States of the United States with other corporations and with individuals, firms, and partnerships engaged in the sale of renovated second-hand, old, used, and discarded men's felt hats, and with other corporations and with individuals, firms, and partnerships engaged in the sale of new felt hats between and among the various States of the United States.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent for more than two years last past has bought and still buys second-hand, old, used, and discarded men's felt hats which are and have been renovated by respondent, and sold by respondent to retailers, jobbers, and wholesalers thereof as set out in paragraph 1 hereof. The second-hand, old, used, and discarded men's felt hats which are renovated by respondent are first cleaned, then steamed, ironed, and shaped by respondent and relined and fitted with new ribbon bands, sweat bands, and size labels by the respondent, and then sold by respondent to retailers, who resell them to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who resell them to the purchasing public. Said relin-

ings and sweat bands are in some cases purchased by respondent from manufacturers thereof, and in other cases are manufactured by the respondent. Such new lining and sweat bands purchased by respondent from manufacturers thereof and manufactured by the respondent bear various trade names, designs, devices, and wordings.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new hats which have never been worn, and said hats are sold by respondent to retailers and to jobbers and wholesale dealers without anything on or about said hats to indicate that such hats are in fact second-hand hats which have been renovated and made over by said respondent. Said hats sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said hats have been previously worn, and then renovated and made over, and under such circumstances as to indicate that they are new hats. Said hats sold by respondent to retailers are resold by such retailers to the public without disclosing the fact that such hats have been previously worn and then renovated and made over and under such circumstances as to indicate that they are new hats.

The cost to respondent of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats of similar quality, and respondent is thereby able to sell said hats to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new hats can sell hats of the same or similar quality to retailers, jobbers, and wholesale dealers.

PAR. 4. It is the common belief and understanding among wholesale and retail dealers, and the purchasing public, that hats having the appearance of new and unused hats, as do hats distributed by respondent, and sold by respondent and those dealing in men's hats without anything on or about said hats to indicate that such is not so, are in fact hats which are new and unused, and have never been worn, or used by anyone previously; and said wholesale and retail dealers, and the purchasing public, when buying hats having the appearance of new and unused hats, and without anything on or about said hats to the contrary, are entitled to receive new and unused hats, and not second-hand, old, used, and discarded hats which have been renovated and made over. The acts and practices of respondent as hereinabove set forth, are calculated to, and do, have the capacity and tendency of inducing many wholesale and retail dealers, and many of the purchasing public, to purchase the said second-hand,

old, used, and discarded hats which have been renovated and made over by respondent, in the mistaken belief that they are purchasing new and unused hats, and tend to and do unfairly divert trade to respondent from concerns engaged in the manufacture and sale of new hats in interstate commerce throughout the various States of the United States and the District of Columbia.

There are among the competitors of the respondent engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats as mentioned in paragraph 1 hereof, corporations, individuals, firms, and partnerships who label, tag, and otherwise indicate on the renovated hats sold by them that such felt hats are not new but are renovated. The acts and practices of the respondent, as hereinabove set forth, are calculated to and tend to and do unfairly divert trade to respondent from such corporations, individuals, firms, and partnerships engaged in the sale of renovated felt hats in interstate commerce throughout the various States of the United States and the District of Columbia. By the acts and practices of the respondent hereinbefore described, substantial injury is done by respondent to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, 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 22nd day of July 1935, issued and served its complaint in this proceeding upon the respondent, The Aborn Hat Manufacturing Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by George Foulkes, attorney for the Commission, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by James O'Callaghan, attorney for the respondent; and said testimony and

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evidence was duly recorded and filed in the office of the Commission. Thereinafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint, the respondent having filed no brief as required by the rules of the Commission; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Aborn Hat Manufacturing Company, is a corporation organized under the laws of the State of Illinois. Respondent's principal office and place of business is located at 117 North Wells Street, Chicago, Ill.

About the year 1929 respondent began the business of manufacturing men's made-over felt hats from second-hand, old, used, and discarded men's felt hats, and of selling and distributing said hats to jobbers and retail merchants located in various States of the United States.

Respondent causes said hats, when sold, to be transported from its aforesaid place of business in the city of Chicago, State of Illinois, to the aforesaid purchasers thereof located in States other than the State of Illinois.

In the course and conduct of its business respondent is now and has been engaged in substantial competition in commerce between and among the various States of the United States with other corporations and with individuals, firms, and partnerships engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats, and with other corporations and with individuals, firms, and partnerships engaged in the sale of new felts between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business of manufacturing, selling, and distributing men's made-over felt hats, respondent employs workmen in its place of business who are engaged in various operations involved in the processes of making over men's felt hats, described hereinafter.

Sales of said hats are made direct by respondent to jobbers and retail merchants throughout the United States. Respondent does not send out any advertising literature.

Respondent purchases hats which have been previously worn and discarded from concerns which deal in old, discarded and previously worn hats.

Said hats are purchased at prices ranging from \$1.00 to \$1.75 per dozen.

In the course and operation of its said business respondent also purchases new felts from which respondent manufactures new hats. The manufacture of new hats from said new felts constitutes the larger portion of respondent's business.

When the old and previously used felt hats are purchased, respondent strips all trimmings from the hats and sends them to a dry cleaning establishment in the city of Chicago, where they are put through a cleaning process. When the hats are returned they are blocked by respondent, and in some instances shellaced when shellacing is deemed necessary, and refitted with new hat bands, sweat leathers, and linings. The purpose of using shellac is to give the hat body a firmness and to cover up slightly worn defects in the hat. In the process of "blocking" the hat is placed on a wooden hat block and is shaped on said block by ironing. Powder is also applied to the hats in order to give the hats uniformity of color. In some instances after the hats have been received from the cleaning establishment, they are sent to a dye-house where they are put through a process of dyeing.

The linings, sweat leathers, and ribbons used by respondent on the made-over hats manufactured and sold by it, are new and are bought from regular dealers in such trimmings.

All hat linings used in new and made-over hats have printed on them a name or design. Respondent has used and now uses linings in its made-over hats bearing the names "Quality," "Wellington," "Colonial," and "Paragon."

PAR. 3. Respondent has salesmen who sell its made-over hats to jobbers and retail dealers direct. There is no word or mark of any kind on the made-over hats renovated and sold by respondent to indicate that the hats are made-over hats and not new hats.

Some of the jobbers and retail merchants who buy made-over hats direct from respondent know that the hats are made-over hats.

Many of such retail merchants go to respondent's place of business and buy the hats and know that the hats are made-over hats.

In invoicing made-over hats no mention is made that the hats are made-over but said hats being designated on the invoice as "seconds" or "specials."

Some retail merchants who purchased hats from respondent did not know that the hats had been previously worn and then made over.

Made-over hats sold by respondent to retail merchants were sold by said retail merchants to purchasers as new hats or as reconditioned new hats.

Some retail dealers did not say anything about the hats being made over unless purchasers inquired as to why the hats were being sold so cheap, in which event they told them that the hats were reconditioned new hats.

The cost to respondent of obtaining, renovating, and making over said hats as aforesaid is much less than the cost to hat manufacturers of manufacturing new hats and respondent is thereby able to sell said hats to jobbers and retail merchants at substantially lower prices than manufacturers of new hats can sell hats to jobbers and retail merchants.

The volume of sales by respondent of old hats which had been previously worn and discarded and purchased and reconditioned by it aggregated in the year 1934 approximately \$10,000 and in 1935 approximately \$8,000. The sale by respondent of such reconditioned hats has constituted about one-fourth of its total business.

Respondent sells its made-over hats at prices ranging from \$6.00 to \$13.00 per dozen, depending upon the quality and condition.

New hats made from new felts sell at prices ranging from \$16.50 per dozen to \$36.00 per dozen.

PAR. 4. The made-over hats manufactured, sold, and distributed by respondent so nearly simulate men's new felt hats in appearance that it is impossible for the ordinary purchaser at retail to distinguish between such made-over hats and new hats.

The use of linings and leather sweat bands having imprinted on them marks and designs similar to those used in new hats and bearing words such as "Colonial," "Wellington," and "Paragon," and "Quality" is deceptive and leads purchasers to believe the hats are new hats.

By the manufacture and sale of made-over hats which have the appearance of new hats, and which do not have on or about them any mark, word or words, or other indication showing that said hats are not new hats but are in fact old, worn, used, and discarded hats which have been cleaned and fitted with new ribbons, linings, and leather sweat bands, respondent enables jobbers to sell said hats to retail merchants as new hats, and retail merchants to sell said hats to the purchasing public as new hats.

The made-over hats manufactured, sold, and distributed by respondent can be sold to retail purchasers as new hats without the purchaser knowing they are in fact made-over hats.

The acts and practices of respondent as hereinabove set forth are calculated to, and do, have the capacity and tendency of inducing many retail merchants and many of the purchasing public, to purchase the said second-hand, old, used and discarded hats which have

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been renovated and made over by respondent, in the mistaken belief that they are purchasing new and unused hats, and tend to and do unfairly divert trade to respondent from concerns engaged in the manufacture and sale of new hats in interstate commerce throughout the various States of the United States.

There are among the competitors of respondent engaged in the sale of renovated, second-hand, old, used, and discarded men's felt hats, corporations, individuals, firms, and partnerships who label, tag, and otherwise indicate on the renovated hats sold by them that such felt hats are not new but are renovated. The acts and practices of respondent as hereinabove set forth are calculated to and tend to and do unfairly divert trade to respondent from such corporations, individuals, firms, and partnerships engaged in the sale of renovated felt hats in interstate commerce in various States throughout the United States.

By the acts and practices of the respondent hereinabove described substantial injury has been done and is being done to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances described in the foregoing findings as to the facts are to the prejudice of the public and of the competitors of respondent, and are unfair methods of competition in 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 answer of respondent, testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief in support of the complaint, the respondent having filed no brief as required by the rules of the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondent, The Aborn Hat Manufacturing Co., a corporation, its officers, agents, representatives, servants,

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and employees in connection with the sale or offering for sale of men's hats in interstate commerce, cease and desist from :

Selling or offering for sale men's old, worn, used and discarded felt hats which have been cleaned and fitted with new ribbons, sweat bands, and linings, unless and until there is stamped upon, affixed or attached to said hats in a conspicuous place so as to be easily and readily seen, a word or words clearly indicating that said hats are not new hats but are used and worn hats which have been cleaned and made over.

It is further ordered, That the respondent above named within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner in which it has complied with this order.

Complaint

IN THE MATTER OF
REPAIR PARTS & REPLACEMENT 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 2544. Complaint, Sept. 6, 1935—Decision, Sept. 12, 1936

Where a corporation engaged for some years past in manufacture, sale, and distribution of vacuum cleaners under name "Hoover," and in expenditure of large sums of money in advertising same, so that said name, imprinted thereon, had become widely and favorably known to the purchasing public and it had acquired a valuable goodwill therein as applied to its said products and parts, and said word in advertisement, sale, and distribution in interstate commerce of such vacuum cleaners and parts had acquired a secondary meaning and significance as denoting to buying public that cleaners and parts advertised thereunder were made and distributed by it; and thereafter a concern dealing in dust bags made by and for said concern, for use on Hoover cleaners, and of same general size, shape, and color as those made, sold, and distributed in interstate commerce by said corporation—

Sold said dust bags with word "Hoover" imprinted thereon in large and conspicuous letters, together, in some cases, with words, in very small type and much less conspicuous and legible fashion, "Mfr'd by R. P. & R. Co.—Made to Fit," so that attention of average purchaser or prospective purchaser would be drawn only to word "Hoover" in same coloring as used on said corporation's bags and in simulation of its said trade name "Hoover" as used by it;

With result that vacuum cleaner dust bags of said competitor concern were passed off as and for those made and sold by said corporation, and with capacity and tendency to deceive and mislead purchasing public into erroneous belief that dust bags sold and distributed in interstate commerce by said competitor were made by said corporation, and to divert unfairly trade to said competitor from individuals and concerns competing with it in sale and distribution in commerce of vacuum cleaners, parts, and dust bags therefor, and who did not wrongfully make use of word "Hoover" in advertising, describing, and selling their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

Mr. John W. Hildrop and *Mr. J. T. Welch* for the Commission.

Mr. Oscar A. Jordan, 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 Com-

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mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Repair Parts & Replacement 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 to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Repair Parts & Replacement Company, Inc., hereinafter referred to as respondent, is a corporation with its principal place of business at Chicago, Ill., and is now and has been engaged in the sale of vacuum cleaners and vacuum cleaner parts, and in the repairing and rebuilding of such cleaners. In the course and conduct of its business the respondent, Repair Parts & Replacement Company, Inc., a corporation, sells and distributes its said products, vacuum cleaners and vacuum cleaner parts, in the various States of the United States, other than the State of Illinois, and ships its said products into and through said States, in interstate commerce. In the course and conduct of its said business, said respondent, Repair Parts & Replacement Company, Inc., is, and was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. The Hoover Company is likewise a corporation, with its principal place of business located at North Canton, Ohio, and is now and has been for some years past engaged in the manufacture of vacuum cleaners and in the sale and distribution of said products in interstate commerce. By reason of its large expenditures for advertising, said products of the said Hoover Company have become widely and favorably known to the trade and purchasing public, and it has acquired a valuable goodwill in the same and in the name of "Hoover" as applied to vacuum cleaners.

PAR. 3. In the course and conduct of its business, respondent, Repair Parts & Replacement Company, Inc., a corporation, in soliciting the sale of and selling its products in interstate commerce, issued and circulated widely among customers and prospective customers an advertising catalog and price list entitled, "The Vacuum Cleaner Encyclopedia," wherein the following statements and representations are made: "Parts Listed are Manufactured by the R. P. and R. Co. and are guaranteed to fit." The foregoing words appear prominently displayed at the top of the first page of said "The Vacuum Cleaner Encyclopedia," and respondent further caused the words, "Mfg'd. by R. P. & R. Co. Made to fit," to be placed on cer-

tain sweeper bags, which it likewise sold and distributed in interstate commerce, when in truth and in fact said respondent, Repair Parts & Replacement Company, was not and is not a manufacturer of the products it advertised and sold in interstate commerce, and did not and does not manufacture or make either the sweeper bag or the other parts listed in such advertising catalog, but purchased the same from the manufacturers thereof.

Respondent, Repair Parts & Replacement Company, Inc., a corporation, further caused to be manufactured a dust bag for use with the Hoover cleaner, of the same size, shape, and color as similar bags used by the Hoover Company of North Canton, Ohio, hereinbefore referred to in paragraph 2, bearing imprinted across it in conspicuous letters the word "Hoover," and respondent used and applied such bags, so simulating those used by the Hoover Company, to genuine Hoover cleaners which it rebuilt or repaired and sold and distributed in interstate commerce, with the result that purchasers were misled and deceived into the belief that the dust bags placed on the machines so rebuilt or repaired by respondent, Repair Parts & Replacement Company, Inc., were manufactured by the Hoover Company of North Canton, Ohio, when in truth and in fact such was not the case.

The acts and practices of the respondent described and set out hereinabove had, and have, the capacity and tendency to deceive and mislead the purchasing public into the erroneous belief that said respondent manufactures vacuum cleaners and vacuum cleaner parts, which it advertises, sells, and distributes in interstate commerce, and that the dust bag sold by respondent and distributed in interstate commerce was manufactured by the Hoover Company of North Canton, Ohio; and also have the tendency and capacity to unfairly divert trade to respondent from individuals, firms, corporations, and associations in competition with respondent, selling and distributing in interstate commerce vacuum cleaners, vacuum cleaner parts, and dust bags for vacuum cleaners, but who do not claim and represent themselves to be manufacturers, as well as from those individuals, corporations, associations, and firms actually manufacturing vacuum cleaners and vacuum cleaner parts and selling and distributing same in interstate commerce, and from those competitors of respondent engaged in the sale and distribution of dust bags for vacuum cleaners in interstate commerce who do not make use of the word "Hoover" in advertising and describing same.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and 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.

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 6th day of September 1935, issued and served its complaint in this proceeding upon respondent, Repair Parts & Replacement Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto on September 26, 1935, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Oscar A. Jordan, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, the testimony and evidence, and briefs in support of the complaint and in defense thereto, oral argument having been waived by attorney for the respondent, and the Commission having duly considered the same, and being now 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. Repair Parts & Replacement Company, Inc., hereinafter referred to as respondent, is a corporation with its principal place of business at Chicago, Ill., and is now and has been for more than one year engaged in the sale of vacuum cleaners and vacuum cleaner parts, and in the repairing and rebuilding of such cleaners. In the course and conduct of its business, the respondent, Repair Parts & Replacement Company, Inc., a corporation, sells and distributes its said products, vacuum cleaners and vacuum cleaner parts, in the various States of the United States, other than the State of Illinois, and ships its said products into and through said States, in interstate commerce. In the course and conduct of its said business, said respondent, Repair Parts & Replacement Company, Inc.,

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

PAR. 2. The Hoover Company is a corporation with its principal place of business located at North Canton, Ohio, and is now and has been for some years past engaged in the manufacture of vacuum cleaners, and in the sale and distribution of said cleaners in interstate commerce. By reason of its large expenditures for advertising, said products of the said Hoover Company, designated by the name "Hoover" imprinted on them, have become widely and favorably known to the purchasing public. Said Hoover Company has acquired a valuable goodwill in the name of "Hoover" as applied to vacuum cleaners and vacuum cleaner parts. The word "Hoover" in the advertising, sale, and distribution in interstate commerce of vacuum cleaners and vacuum cleaner parts has acquired a secondary meaning and significance to the extent that its use denotes to the buying public that vacuum cleaners and cleaner parts so advertised under the name of "Hoover" are manufactured and distributed by the Hoover Company of North Canton, Ohio. The Hoover Company of North Canton, Ohio, manufactures approximately 150,000 vacuum cleaners per annum, and it also manufactures large numbers of dust bags to be used on same; there being approximately three or four million vacuum cleaners manufactured and sold in interstate commerce by the Hoover Company of North Canton, Ohio, in the United States.

PAR. 3. Respondent, Repair Parts & Replacement Company, Inc., a corporation, for some time past has manufactured, is still manufacturing, and has had and is still having manufactured for it, a dust bag for use on Hoover cleaners of the same general size, shape, and color as similar bags manufactured, sold, and distributed in interstate commerce by the Hoover Company of North Canton, Ohio, and there is imprinted across the said dust bags of respondent in large and conspicuous letters, the word "Hoover." On some of the dust bags sold and distributed by respondent in interstate commerce, and bearing imprinted thereon the word "Hoover", there appears the statement in very small type, and much less conspicuous and legible than the word "Hoover", the words "Mfr'd. by R. P. & R. Co.—Made to Fit", but the word "Hoover", used as aforesaid, is so much larger in lettering and type than the said words "Mfr'd. by R. P. & R. Co." that the attention of the average purchaser or prospective purchaser would be drawn only to the word "Hoover." The word "Hoover" on said bags of respondent is imprinted in the

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same coloring as used on the bags manufactured and sold by the Hoover Company of North Canton, Ohio. The use of said word "Hoover" by the respondent on its dust bags for vacuum cleaners, in the manner set out herein, is a simulation of the trade name "Hoover" as used by the Hoover Company of North Canton, Ohio, and results in a passing off of the vacuum cleaner dust bags sold by it as and for vacuum cleaner dust bags manufactured and sold by the Hoover Company of North Canton, Ohio. The acts and practices of the respondent as herein described and set out have and had the capacity and tendency to deceive and mislead the purchasing public into the erroneous belief that the dust bags sold and distributed in interstate commerce by the respondent were manufactured by the Hoover Company of North Canton, Ohio, and also have the capacity and tendency to unfairly divert trade to respondent from individuals, firms, corporations and associations in competition with respondent, selling and distributing in interstate commerce, vacuum cleaners, vacuum cleaner parts, and dust bags for vacuum cleaners, who do not wrongfully make use of the word "Hoover" in advertising, describing and selling their respective products. As a consequence thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent are each and all to the prejudice of the public, and to the injury of the competitors of the respondent in interstate commerce and constitute unfair methods of competition in 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 answer of respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September

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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, Repair Parts & Replacement Company, Inc., a corporation, its officers, agents, servants, and employees, in connection with the sale, offering for sale, and distribution of dust bags for vacuum cleaners in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

(a) Representing in its advertisements, in newspapers, periodicals, journals, magazines, or other publications, on its stationery, and by handbills, circulars, pamphlets, circular letters, or otherwise, that said dust bags for vacuum cleaners so sold by it are manufactured by, and are the products of, the Hoover Company of North Canton, Ohio;

(b) Imprinting or lettering, or by any means, instrumentality or device placing on said dust bags so sold by it the word "Hoover";

(c) Using the word "Hoover" on such dust bags so sold by it, either alone or in conjunction with any other words or phrases, when such dust bags bearing the word "Hoover" are not manufactured by, and are not the products of, the Hoover Company of North Canton, Ohio.

It is further ordered, That respondent shall, within 60 days of the 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
**RADUMAC MINERAL COMPANY AND A. YODER, TRADING
 AS RADUMAC MINERAL COMPANY**

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

Docket 2149. Complaint, Sept. 14, 1935¹—Decision, Sept. 15, 1936

Where an individual dealing through corporate entity, and, following dissolution thereof, under corporate name, in a liquid produced by "dripping off" into containers water poured four or five days theretofore over soil from his "mine", and in sale of his said so-called "Radumac", bottled, through dealers in drugs and medicines for resale to public, and direct to those desiring to purchase remedies for treatment of ailments, diseases, and conditions for which said product was advertised by him through pamphlets, circulars, and other printed matter—

- (a) Represented that same would cure or was beneficial in treatment of a large number of ailments and conditions including anemia, arthritis, high or low blood pressure, indigestion, rheumatism, kidney troubles, and many others specified;
- (b) Represented that it "does wonders", and "heals, penetrates and prevents germs", and that it "will aid in assisting in the elimination" of the diseases, ailments, afflictions, and conditions set out, and that it was a health tonic and would prevent many serious diseases; and
- (c) Represented that it contained the essential mineral elements for building new body tissues, and that all but four elements contained in the body were found therein, and that use thereof would supply minerals needed in body where there was a mineral deficiency therein;

Facts being that it would neither prevent nor cure nor be beneficial in treatment of all or any of the various diseases specified, excepting one or two percent of anemia cases, and inflamed or sore throat, and feet in certain cases, in which by reason of iron salts content, it might be of some value and soothing, and it did not possess therapeutic efficacy represented and implied in prevention, treatment, or cure of said diseases, etc., for which recommended, and would not do wonders, or heal or penetrate or prevent germs, and said various statements and representations were false;

With effect of misleading and deceiving many persons afflicted with said various diseases, etc., and of causing a substantial portion thereof to believe that said representations and implications were true and by reason thereof to buy the same, and of thereby unfairly diverting trade to him from competitors who truthfully represent their products; to their substantial injury and that of the public:

¹ Amended.

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Brown & Springstun, of Detroit, Mich., for respondents.

AMENDED COMPLAINT

Whereas the Federal Trade Commission did, herefore, to wit, on January 15, 1934, issue its complaint herein charging the Radumac Mineral Company, a corporation, respondent herein, with using unfair methods of competition in commerce as "commerce" is defined in 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 *Whereas*, subsequent to the issuance and service of said complaint it has appeared to the said Commission that one A. Yoder, an individual trading as the Radumac Mineral Company, should have been named as a respondent with the said Radumac Mineral Company, a corporation;

Now, therefore, 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 Radumac Mineral Company, a corporation, and A. Yoder, an individual trading as the Radumac Mineral Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondent, A. Yoder, has been for several years last past, and now is engaged in the manufacture, and sale in commerce among and between the various States of the United States, of a product variously denominated by him as Radiumac or Radumac, with his principal place of business in the city of Los Angeles, State of California.

In 1931 he caused to be incorporated under the laws of the State of California the Radiumac Mineral Company, Limited, which name was subsequently changed to Radumac Mineral Company, with its principal place of business in the city of Los Angeles, State of California, in order that he might have a corporate instrumentality, by and through which he could establish and maintain such business and the policy and practices described in paragraph 2 hereof.

Respondent, A. Yoder, is sole and exclusive owner of respondent, Radumac Mineral Company, and controls and directs its business and all of its affairs, using it as the medium under whose name he causes his product Radumac or Radiumac to be advertised and offered for sale.

Respondent, A. Yoder, operated said business by and through the instrumentality above mentioned for a period of time, and subsequently abandoned the use of this corporate instrumentality and began to conduct the business under the trade name, Radumac Mineral Company, and is now and has for more than one year last past so conducted said business.

In the course and conduct of such business, respondents have been and now are engaged in competition in interstate commerce with individuals, partnerships, and corporations selling in such commerce similar commodities or products, or any products offered for sale or sold for the treatment or cure of, or for use in, the various diseases or conditions hereinafter described in paragraph 2, for which Radumac is offered for sale or sold. It has been and is the practice of respondents, when sold, to cause such product to be transported to purchasers thereof, located in the various other States of the United States than in the State of California.

PAR. 2. It has been and is the practice of respondents to offer for sale and sell said product by means of false and misleading statements and representations in circulars distributed or caused to be distributed among purchasers or prospective purchasers in the various States of the United States.

In large and conspicuous words respondents have caused and cause to appear on the first page of one of said circulars concerning Radumac the following legend:

RADUMAC
DOES WONDERS
Contains No Radium,
Heals, Penetrates
and
Prevents Germs.

On the bottom of such circular appears the following:

The medical world recognizes the medicinal value of these health giving anhydrous salt properties.

The circular contains representations such as the following:

While Radumac is an excellent aid in assisting in the elimination of the following diseases and troubles, it is a much better health tonic and if used regularly will prevent a great many serious diseases. We highly recommend

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to all who are troubled either chronically or occasionally with any of these diseases that they use Radumac as a tonic at least once a day but always take three times daily according to directions when any of the symptoms of these diseases occur.

The diseases referred to are specifically set forth in a paragraph entitled:

Diseased Conditions in which Radumac has been found useful.

Under the subhead in such circular "Diseased Conditions in which Radumac has been found useful", appears the following list of diseases and conditions.

Anemia—Run-down Condition; Acne-Eczema; Bed-wetting (Enuresis); Bleeding; Blood-pressure, High or Low; Blood—poor, impoverished, thin; Boils; Burns; Carbuncles; Chilblains; Children—Defective, stunted, puny, ill-nourished, backward; Coldsore, fever, blisters, Convalescence; Cough; Crackling, squeaking, stiff joints; Dermatitis; Eczema; Epistaxis (Nose bleed); Feet (sore, sensitive, swollen), Corns; Hemorrhoids; Hemorrhage, Herpes, Hypoplasia; Infection; Ingrowing toenails; Insect bites; Intestinal indigestion, indigestion, irritation, gas soreness, ulcers; Kidneys; Leucorrhoea; Liver diseases; Malnutrition; Mouth—sore mouth, ulcers; Mucous colitis; Nervousness; Neuralgia; Obesity; Ovarian trouble; Open sores; Piles, hemorrhoids; Pimples; Polyuria; Prickly heat, chafing; Pyorrhoea; Rheumatism, Neuritis, Neuralgia, Stomach troubles; Sunburn; Teeth—loose, sore, etc.; Throat—sore; tonsillitis, etc.; Women's diseases; Worms; Wounds, cuts, bruises.

The circular also contains false representations to the effect that all the essential minerals for building new body tissues and all but four of the elements contained in the body are found in Radumac.

The circular also contains false representations to the effect that Radumac will restore any of the lost and needed minerals in which the body may be deficient when individuals feel tired, run-down, without energy, appetite or digestion.

In another circular distributed by respondents among prospective purchasers in various States of the United States in addition to a representation made in large and conspicuous letters to the effect that "The Miracle Radumac Does Wonders" there are other false representations to the effect that Radumac "heals, penetrates and prevents diseases", a representation also appearing in other circulars distributed by respondents. There is also a representation in the aforesaid circular as follows:

"Nature's gift to mankind for all blood ailments" and also a representation to the effect that Radumac is for "first aid in your home and automobile". On the second page of such circular there are representations to the effect that Radumac is for internal use in any—

Stomach trouble of the liver, kidney, bladder, gastritis, weak bladder and kidneys, rheumatism, neuritis, arthritis, pyorrhoea, inflamed tonsils, sinus

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trouble, catarrh, asthma, eczema, pimples, skin eruptions, carbuncles, ulcers, boils, high and low blood pressure, pleurisy, neuralgia, lung trouble,

There is on page two of such circular also a representation that impure blood is the cause of all of the ailments hereinabove mentioned, accompanied by the injunction "Clean out the source". Again the respondents represent in such circular on page two:

Radumac will positively purify your blood and increase the circulation, forcing the organs of your body to function correctly.

Respondents also falsely offer Radumac for external use in case of—

Ulcers, asthma, wounds, bruises, insect bites, hemorrhage, piles, fistula, athlete's foot, bleeding gums, loose teeth, sore throat, tonsillitis, burns, scalds, and the prospective purchaser is also assured in such circular that Radumac stops toothache in just one minute. Respondents falsely represent that all of the mineral elements required by nature for the proper functioning of human organs are in Radumac so that individuals using Radumac are using—

The prescription of the Creator who designed your body and gave you life.

In truth and in fact the product offered for sale and sold by respondents as Radumac does not contain all but four of the elements in the human body nor all of the essential minerals, has not furnished, cannot and does not furnish the necessary minerals for the remineralization of the body when the individual is suffering from a mineral deficiency or mineral deficiencies. Radumac has not accomplished, cannot and does not accomplish any of the beneficial results attributed to it by respondents in the advertising matter above described, is neither a remedy for nor a cure of any of the conditions hereinabove mentioned and is neither useful for the treatment of them or any of them, nor does it possess therapeutic value or exercise any therapeutic effect upon such diseases or any of them.

PAR. 3. Individuals, partnerships, and corporations are, and have been for more than one year last past, offering for sale and selling in interstate commerce truthfully advertised and described medical preparations or compounds as cures of or remedies for, or for treatment of, the diseases for which Radumac is falsely advertised.

PAR. 4. The false and misleading statements and representations of respondents described in paragraph 2 hereof have had and have, and each of them has had and has the capacity and tendency to mislead and deceive that portion of the purchasing public afflicted with one or more of the diseases or conditions described in the circular of respondents mentioned in paragraph 2 hereof into the belief that by use of Radumac their diseases or conditions can be cured or greatly

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relieved and benefited, and to induce the purchase of such product in reliance on such erroneous belief.

PAR. 5. The above and foregoing practices of respondents have had and have, and each of them has had and has the capacity and tendency to divert trade to respondents from competitors offering for sale and selling in interstate commerce preparations, compounds and products truthfully described and designated as useful or helpful in the treatment of the aforesaid diseases or conditions.

PAR. 6. The above and foregoing practices of respondents are all to the prejudice of the public and of respondents' competitors, and have been and are unfair methods of competition 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."

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 January 15, 1934, issued its complaint against the Radumac Mineral Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, and on January 29, 1934, an answer to said complaint was filed by A. Yoder, an individual trading as the Radumac Mineral Company, wherein he stated that the Radumac Mineral Company, a corporation, was no longer in existence, its charter having been cancelled under the laws of the State of California, and that Radumac Mineral Company was a trade name used by him in the conduct of the business formerly operated under the name of Radumac Mineral Company, a corporation. Whereupon the Federal Trade Commission, on September 14, 1935, issued its amended complaint in this proceeding against Radumac Mineral Company, a corporation, and A. Yoder, an individual, trading as the Radumac Mineral Company. No answer was filed to said amended complaint by either of said respondents, and thereafter testimony and evidence in support of the allegations of said amended complaint were introduced by Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said amended complaint, testimony and evidence, and brief in support of the complaint, no brief having been filed by either of said respondents and

oral argument having been waived; and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent A. Yoder is an individual trading as the Radumac Mineral Company, with his office and principal place of business located in the city of Los Angeles, State of California. Respondent A. Yoder is engaged in the business of offering for sale and selling a remedial preparation under the name "Radumac". Respondent A. Yoder caused Radumac Mineral Company, a corporation, to be organized under the laws of the State of California in the year 1932, and operated the business through said corporate entity until the corporation was no longer in existence because of the cancellation of its charter under the laws of the State of California in the year 1933. Since the cancellation of the charter of said corporation, the respondent A. Yoder has operated under the trade name "Radumac Mineral Company".

Respondent A. Yoder markets his said product through dealers in drugs and medicines for resale to the public, and by sales direct to persons desiring to purchase remedies for treatment of the ailments, diseases and conditions for which the respondent advertises said product.

Respondent A. Yoder offers for sale and sells said preparation in interstate commerce, and makes sales in many of the States of the United States other than the State of California, and when sales are made respondent A. Yoder causes said preparation to be transported from his place of business in the city of Los Angeles, in the State of California, to the purchasers thereof.

Respondent A. Yoder is in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with individuals, firms, and corporations who are engaged in said commerce in the business of offering for sale and selling remedies, preparations, and products similar to and for use for the same purposes as those for which the respondent A. Yoder advertises and sells his said preparation.

PAR. 2. The preparation "Radumac", offered for sale and sold by the respondent A. Yoder as above set out, is in liquid form and is produced by pouring water over certain soil secured by the respondent A. Yoder from his "mine". The water is allowed to remain in the soil for four or five days when it is "dripped off" in containers, bottled and is ready for sale as "Radumac". An analysis

used by the respondent A. Yoder in connection with the sale of said preparation shows the preparation to be composed of the following:

Silica Oxide, .93 grains per gallon; Total Solids, 6337.00 grains per gallon; Free Sulphuric Acid, 936.90 grains per gallon; Aluminum Sulphate, 62.69 grains per gallon; Ferric Sulphate, 2945.00 grains per gallon; Calcium Sulphate, 209.90 grains per gallon; Magnesium Sulphate, 637.50 grains per gallon; Sodium Phosphate, 33.92 grains per gallon.

PAR. 3. Respondent A. Yoder, in the course and conduct of his business, advertises his said preparation through pamphlets, circulars, and other printed matter. In said advertising matter respondent A. Yoder represents and implies that said preparation will prevent or cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by respondent A. Yoder in said advertising matter which his preparation will cure, or is beneficial in the treatment of, are the following: anemia, acne-eczema, arthritis, asthma, enuresis, high or low blood pressure, poor, impoverished or thin blood, boils, burns, carbuncles, chilblains, coldsores, fever, blisters, coughs, cracking, squeaking or stiff joints, dermatosis, epistaxis, sore, sensitive or swollen feet, corns, hemorrhoids, hemorrhage, herpes, hypopepsia, infections, ingrowing toenails, insect bites, intestinal indigestion, indigestion, gas soreness, ulcers of the digestive organs, kidney troubles, leucorrhea, liver diseases, malnutrition, mouth ulcers, mucous colitis, nervousness, neuralgia, neuritis, obesity, ovarian trouble, open sores, piles and hemorrhoids, pimples, polyuria, prickly heat and chafing, pyorrhea, rheumatism, stomach troubles, sunburn, loose or sore teeth, sore throat, tonsilitis, women's diseases, worms, wounds, cuts and bruises, liver, kidney and bladder troubles, gastritis, weak bladder or kidneys, sinus trouble, catarrh, skin eruptions, pleurisy, lung troubles, fistula, athlete's foot, bleeding gums, and scalds.

In this connection, the respondent represents that said preparation "does wonders"; "heals, penetrates and prevents germs"; that it "will aid in assisting in the elimination" of the diseases, ailments, afflictions and conditions above set out; that the preparation contains the essential mineral elements for building new body tissues; that all but four elements contained in the body are found in said preparation; that the use of said preparation will restore any lost and needed minerals in which the body may be deficient; and that the preparation is a health tonic and will prevent many serious diseases.

In truth and in fact said preparation of respondent A. Yoder will not prevent or cure, nor is it beneficial in the treatment of, all, or

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any of, the diseases, ailments, afflictions and conditions, above set out, except that in one or two per cent of the anemia cases the preparation might be of some value because of its iron salts content, and for the same reason might be soothing to an inflamed or sore throat, and soothing to sore feet where caused from too much walking, a lack of care, or from excessive sweating.

In truth and in fact said preparation does not do wonders, heal, penetrate or prevent germs; it will not aid in the elimination of the diseases, ailments, afflictions and conditions above enumerated; it does not contain the essential mineral elements for building new body tissues; it does not contain all of the elements found in the body except four; its use will not restore to the body any lost or needed minerals, and said preparation is not a health tonic and will not prevent serious diseases. In truth and in fact said preparation does not possess the therapeutic efficacy represented and implied by the respondent A. Yoder in the prevention, treatment or cure of the diseases, ailments, afflictions, and conditions for which it is recommended.

PAR. 4. The representations and implications of the respondent A. Yoder, hereinabove set out, are false and misleading and have the tendency and capacity to and do mislead and deceive many persons affected with the diseases, ailments, afflictions and conditions about which said representations and implications are made, and cause a substantial portion of such persons to believe that said representations and implications are true and that said preparation will prevent or cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions and that said preparation possesses the therapeutic efficacy represented and implied by the respondent A. Yoder; and cause a substantial portion of such persons, because of such erroneous belief, to purchase said preparation of the respondent A. Yoder, thereby unfairly diverting trade to him from his competitors who truthfully represent their products, to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent A. Yoder 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 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, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, no brief having been filed by the respondent and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that the 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 A. Yoder, an individual trading as the Radumac Mineral Company, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of that certain preparation now sold by the said respondent under the name "Radumac", or any liquid, powder or other preparation, under whatever name sold, composed of similar ingredients and possessing therapeutic properties similar to the preparation now known as and sold by the said respondent under the name "Radumac", in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation will prevent or cure, or is beneficial in the treatment of, the following diseases, ailments, afflictions and conditions: anemia, acne—eczema, arthritis, asthma, enuresis, high or low blood pressure, poor, impoverished or thin blood, boils, burns, carbuncles, chilblains, coldsores, fever, blisters, coughs, cracking, squeaking or stiff joints, dermatosis, epestaxis, corns, hemorrhoids, hemorrhage, herpes, hypopepsia, infections, ingrowing toenails, insect bites, intestinal indigestion, indigestion, gas soreness, ulcers of the digestive organs, kidney troubles, leucorrhea, liver diseases, malnutrition, mouth ulcers, mucous colitis, nervousness, neuralgia, neuritis, obesity, ovarian trouble, open sores, piles and hemorrhoids, pimples, polyuria, prickly heat and chafing, pyorrhea, rheumatism, stomach troubles, sunburn, loose or sore teeth, women's diseases, worms, wounds, cuts and bruises, liver, kidney and bladder troubles, gastritis, weak bladder or kidneys, sinus trouble, catarrh, skin eruptions, pleurisy and lung troubles, fistula, athlete's foot, bleeding gums and scalds;

2. That said preparation does wonders, heals, prevents germs or that it is a health tonic and will prevent disease;

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3. That the preparation contains essential mineral elements for building new body tissues; or that all but four of the elements in the human body are found in said preparation; or that the use of said preparation will supply the minerals needed where there is a mineral deficiency in the body.

It is further ordered, That the 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

IN THE MATTER OF

CHARLES A. SARETSKY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2805. Complaint, May 15, 1936—Decision, Sept. 15, 1936*

Where an individual engaged as jobber and converter of interlinings for ultimate use in manufacture of garments, and in sale thereof to purchasers in various States and in District of Columbia—

Supplied to customer garment manufacturers for their use labels containing legend that "This garment is interlined with Lambs' Wool Filling", or "with 100% Lambs' Wool Filling", or "with 100% Wool Filling", or "With Wool Filling", as case might be, notwithstanding fact his said interlinings were not thus composed, but were made up in part of wool or reworked wool, adulterated with a large percentage of cotton, and cloth to which filling was attached was of cotton entirely;

With effect of misleading and deceiving purchasers of aforesaid products and of finished garments to which such tags or labels were attached by manufacturers thereof, into erroneous belief that said individual's product was in fact composed of lambs' wool or wool, as on said labels set forth, and into purchase of said products in such erroneous beliefs, and with effect of placing in hands of manufacturers, fabricators, jobbers, dealers, and retailers of finished garments composed in part of his said products, a means of misleading and deceiving the purchasing and consuming public and of unfairly diverting trade thereby to him from competitors among whom there are dealers and fabricators of similar filling or interlinings who do not in anywise thus designate their products as "Lambs' Wool", etc., or use language of like import, but truthfully represent the character and quality thereof and do not misrepresent the same; to the substantial injury of competition in commerce:

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

Before *Mr. John L. Hornor* and *Mr. W. W. Sheppard*, trial examiners.

Mr. James M. Hammond 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 Charles A. Saretsky, an individual, is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing

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to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues this, its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles A. Saretsky, is an individual trading under his own name, whose office and principal place of business is located at 246 West 38th Street, in the city of New York, State of New York. He is now, and has been for more than one year last past, engaged as a jobber and converter of interlinings for use in the fabrication or manufacture of garments, shipping such products, when sold, to the purchasers thereof, some located in the State of New York, and others located in various States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in his aforesaid products. In the course and conduct of his business, the respondent is now, and for more than one year last past has been, in substantial competition with other individuals, and with corporations, firms, and partnerships engaged in the sale of the same and similar products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his business, has caused said products to be tagged, or labeled, or accompanied by a sufficient quantity of loose tags or labels to permit the purchasers of respondent's products, to affix one of said tags or labels to each of the garments eventually manufactured or fabricated, in part, from respondent's interlining, or "filling" as it is sometimes called. The ratio of loose tags furnished by respondent to his customers, who are the manufacturers of the finished garment, is approximately one tag or label for each two yards of interlining or filling sold and delivered by the respondent.

PAR. 3. The wording on the tags or labels furnished by respondent to his customers, as described in paragraph 2, supra, states, among other things, the following:

This garment is interlined with Lambs' Wool filling.

This garment is interlined with 100% Lambs' Wool filling.

This garment is interlined with 100% wool filling.

This garment is interlined with wool filling.

said statements purporting to be descriptive of the character and quality of said products, and serving as representations on the part of respondent as to such quality. In some instances the wording on the tags or labels above described is accompanied by pictures of sheep or lambs, or both.

PAR. 4. In truth and in fact, respondent's product is not "Lambs' Wool filling," nor "100% Lambs' Wool filling," nor "100% wool filling," nor "wool filling," but is a cheap and inferior product, composed in part of wool, or reworked wool, or shoddy, adulterated with a large percentage of cotton, and the cloth to which such filling is attached, and which forms a part of the completed interlining as sold by respondent, is composed entirely of cotton.

PAR. 5. Use by respondent of the aforesaid tags or labels with the wording and representations referred to in paragraph 3, supra, or other similar language, has the capacity and tendency of misleading and deceiving, and has misled and deceived, purchasers of the aforesaid products, and purchasers of the finished garments to which the said tags or labels are attached by the manufacturers or fabricators thereof, into the belief that respondent's said product is in fact composed of "Lambs' Wool," "100% Lambs' Wool," or "100% wool," or "wool," and to purchase such products of respondent in such erroneous belief, and places into the hands of manufacturers, fabricators, jobbers, dealers, and retailers of finished garments composed in part of respondent's products a means of misleading and deceiving the purchasing and consuming public. Among the competitors of respondent mentioned in paragraph 1 hereof are dealers and fabricators of filling or interlining similar to that made and sold by respondent, but who do not in anywise designate such product as "Lambs' Wool," or "100% Lambs' Wool," or "100% wool," or "wool," or by language of like import, and who truthfully represent their products. By the aforesaid acts and practices of respondent, trade is diverted by respondent from his competitors who do not misrepresent their products, whereby substantial injury is being done, and has been done, by respondent to competition in commerce, as herein set out.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 15, 1936, issued and served its

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complaint in this proceeding on respondent, Charles A. Saretsky, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, certain testimony was taken by the Commission in support of the complaint. Thereafter the respondent, with the approval of the Commission, withdrew his said answer and filed in the office of the Commission in lieu thereof a substituted answer in which he admitted all the material allegations of the complaint to be true and waived hearing on the charges set forth in said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substituted answer; briefs and oral arguments of counsel having been waived, and the Commission having duly considered the record and, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles A. Saretsky, is an individual whose principal place of business is located at 246 West 38th Street, New York City. He is now, and has been for more than one year last past, engaged as a jobber and converter of interlinings for ultimate use in the fabrication or manufacture of garments, shipping his products when sold to the purchasers thereof, some of whom are located in the city of New York, and others located in various States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in his aforesaid products. In the course and conduct of his business the respondent is now and for more than one year last past has been in substantial competition with other individuals, and with corporations, firms, and partnerships engaged in the sale of the same and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Interlining is an article used in the clothing manufacturing industry, for placing inside the lining of a garment for the purpose of improving the shape of, or giving additional warmth to the finished garment. The respondent's product consists of a layer of

filling of about one-eighth of an inch in thickness, which, because of its loose consistency and in order to facilitate handling and working, is loosely stitched between an upper and lower layer of very light cotton material. This case pertains only to the filling and does not involve the light outside cotton material to which the filling itself is attached.

PAR. 3. The respondent, in the course and conduct of his business has caused his product to be tagged or labeled or accompanied by a sufficient quantity of loose tags or labels to permit the purchasers of respondent's products, who are manufacturers of finished garments, to affix one of said labels or tags to each of the garments eventually manufactured or fabricated in part from respondent's interlining. When loose tags are furnished by respondent to his customers, they are provided on the ratio of approximately one tag for each two yards of interlining or filling, sold and delivered by respondent.

PAR. 4. The wording on the tags or labels furnished by the respondent to his customers, as above described, states among other things, that:

This garment is interlined with Lambs' Wool Filling.

This garment is interlined with 100% Lambs' Wool Filling.

This garment is interlined with 100% Wool Filling.

This garment is interlined with Wool Filling.

These statements purport to be descriptive of the character and quantity of respondent's product and serve as direct representations on the part of respondent that his said interlining is manufactured from "Lambs' Wool Filling," or "100% Lambs' Wool Filling," or "100% Wool Filling," or "Wool Filling."

PAR. 5. Respondent's said product is not "Lambs' Wool Filling," nor "100% Lambs' Wool Filling," nor "100% Wool Filling," nor "Wool Filling," but is a cheap and inferior product, composed in part of wool or reworked wool, adulterated with a large percentage of cotton, and the cloth to which said filling is attached, is composed entirely of cotton.

PAR. 6. The representations made by respondent as set out and described in paragraph 4 hereof, or other similar language, have a capacity and tendency to mislead and deceive, and have misled and deceived the purchasers of the aforesaid products and purchasers of the finished garments to which the said tags or labels are at-

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tached by the manufacturers or fabricators thereof, into the erroneous belief that the respondent's said product is in fact, composed of "Lambs' Wool," "100% Lambs' Wool," "100% Wool," or "Wool," and into the purchase of said products of respondent in such erroneous belief, and the use of such representations places in the hands of manufacturers, fabricators, jobbers, dealers, and retailers of finished garments composed in part of respondents products a means of misleading and deceiving the purchasing and consuming public. Among the competitors of the respondent mentioned in paragraph 1 hereof, are dealers and fabricators of filling or interlinings similar to that made and sold by respondent, but who do not in anywise designate such products as "Lambs' Wool," "100% Lambs' Wool," "100% Wool," or "Wool," or use language of like import, and who truthfully represent the character and quality of their products. By the aforesaid acts and practices of respondent, trade is unfairly diverted by respondent from his competitors who do not misrepresent their products. As a result thereof substantial injury is being done, and has been done, by respondent to competition in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substituted answer of respondent filed herein on the 31st day of August 1936, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act

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to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Charles A. Saretsky, his agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution of interlining or filling material, in the interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Attaching to his interlining and filling material tags or labels which misrepresent the amount of the wool content, or the kind or quality of the wool content, of such interlining and filling material;

(2) Furnishing to purchasers of his interlining and filling material, to be attached to garments in which such material is used, tags or labels which misrepresent the amount of the wool content, or the kind or quality of wool content, of such interlining and filling material;

(3) In any other manner misrepresenting the amount of the wool content, or the kind or quality of the wool content, of such interlining and filling material.

It is further ordered, That the respondent Charles A. Saretsky, 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 and form in which he has complied with this order.

IN THE MATTER OF
S. M. FRANK & 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 2666. Complaint, Dec. 20, 1935—Decision, Sept. 16, 1936

Where a corporation engaged in manufacture of a pipe designed for equipment with a filter by insertion and use in stem thereof, and in the sale of said pipe and filter for use in connection therewith to wholesalers and to large retailers in the various States and in the District of Columbia; in widely advertising its aforesaid pipes and filters under names "Medico" and "Frank", respectively, in periodicals of national circulation and others, and through display boards and window advertising and otherwise—

Represented that its said "Medico" pipe contained, and was to be used with, the "only filter in the world that really filters", or "the only filter that really filters", or "THE pipe filter that really filters", facts being there are other filters on the market which satisfactorily and efficiently serve purpose for which its said pipe filters generally are designed and used, and filter made and sold by it for use in its said "Medico" pipe was not the only one in the world that really filtered or only pipe filter that really performed such function;

With intent to induce prospective purchasers to buy its said pipes and filters in false belief that they were the only articles in existence and on the market which would satisfactorily serve the purpose for which such filters are used and for which it sold its said filter, and with capacity and tendency to mislead and deceive a substantial number of members of purchasing public and cause a substantial diversion of trade to it from its competitors, who do not thus falsely represent their products; to the substantial injury of actual or potential competition in interstate commerce:
Held, That such acts and practices in the sale of said filter were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Mr. Edward S. Rogers and *Mr. Junius Parker* of *Rogers, Ramsay & Hoge*, 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 S. M. Frank & Company, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition

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in commerce as "commerce" is defined in said act, and it appearing to the said Federal Trade Commission that a proceeding by it in respect thereof would be in the interest of the public, the said Federal Trade Commission hereby issues its complaint against the respondent and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, S. M. Frank & Company, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in the city of New York, in the State of New York. That said respondent is and has been for more than one year last past, engaged in manufacturing smoking pipes and in selling such pipes to purchasers located in States other than the State of New York, and pursuant to such sales and as a part thereof, causes and has caused said pipes so sold to be transported from its place of business in the State of New York into and through States other than the State of New York to said purchasers in the States in which they are located.

PAR. 2. That during all of said time stated in paragraph 1 hereof, there have been and now are other persons, firms, and corporations engaged in the business of manufacturing and selling smoking pipes similar to those sold by respondent, and, pursuant to such sales and as a part thereof, have caused and do cause such pipes to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 3. That the said respondent, in the course and conduct of its business as described in paragraph 1 hereof, adopted as a trade name or brand for certain of the pipes manufactured and sold by it as aforesaid, the word "Medico," and uses and features, and has used and featured, said word "Medico" in advertisements which it causes and has caused to appear in magazines and newspapers of wide circulation throughout the several States of the United States, and in other printed advertising matter circulated, distributed, and displayed to and among respondent's customers and prospective customers, and consumers and prospective consumers of its pipes in various States other than the State of New York. That the use by the respondent of the said trade name or brand, "Medico," in its advertising, as aforesaid, tends to mislead and deceive and does mislead and deceive many of respondent's customers and prospective customers, and many of the consumers and prospective consumers of the pipes sold by respondent, as aforesaid, into the belief that the pipes bearing the said trade name or brand "Medico" have been endorsed by the medical profession and are so constructed or treated as to eliminate or greatly reduce the harmful effects of ordinary pipe

smoking and render said pipes more healthful to the smoker than pipes made by other manufacturers. That, in truth and in fact, the said pipes so manufactured and sold by respondent have not been endorsed or recommended by the medical profession, and are no less harmful and no more healthful to the smoker than many pipes made and sold by other manufacturers.

PAR. 4. That the pipes so manufactured and sold by respondent, as aforesaid, contain a so-called filter; that in the various advertisements which the respondent causes and has caused to be displayed, circulated and distributed to and among its customers and prospective customers and the consumers and prospective consumers of its pipes, as set forth in paragraph 3 hereof, respondent uses and features and has used and featured, in describing said filter, the words, "Only Filter In the World That Really Filters," and other statements and representations to similar effect. That, in truth and in fact, the filter used in the pipes manufactured and sold by respondent is not the only filter in the world that really filters, but, on the contrary, there are other pipes on the market which have filters that satisfactorily and efficiently serve the purpose for which filters are used.

PAR. 5. That the representations made by respondent, as described and set forth in paragraphs 3 and 4 hereof, have the capacity and tendency to mislead and deceive, and do mislead and deceive, many of respondent's customers and prospective customers and many of the consumers and prospective consumers of respondent's products into the erroneous belief that persons buying and smoking pipes manufactured by respondent and bearing the trade name or brand "Medico," as aforesaid, are obtaining the advantages of pipes that are endorsed by the medical profession and are so constructed or treated as to eliminate or greatly reduce the harmful effects of ordinary pipe smoking and render said pipes more healthful to the smoker than pipes made by other manufacturers, and are obtaining the further advantages of the only satisfactory and efficient filter on the market, whereas such representations are contrary to the true facts, as set forth in paragraphs 3 and 4 hereof.

PAR. 6. That there are among the competitors of respondent referred to in paragraph 2 hereof many who do not represent that the pipes manufactured and sold by them are endorsed or recommended by the medical profession or have any peculiarly healthful qualities or are free from the ordinary effects of pipe smoking; that there are also among such competitors many who manufacture pipes with satisfactory and efficient filters and who do not represent that their filters are the only filters that really filter;

and that the aforesaid acts and practices of respondent in making the representations set forth in paragraphs 3 and 4 hereof tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. That the aforesaid 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 the said Act of Congress hereinabove entitled.

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 20th day of December 1935, issued and served its complaint in this proceeding upon the respondent, S. M. Frank & Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney for the Commission, before Edward M. Averill, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Edward S. Rogers and Junius Parker, attorneys for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in opposition thereto (oral arguments of counsel having been waived); and the Commission having duly considered the same and being now 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. The respondent, S. M. Frank & Company, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office, place of business and manufacturing plant in the city of New York, State of New York. Respondent is engaged in the manufacture in the State of New York and in the sale and distribution from said State in all

States of the United States and in the District of Columbia of pipes, cigar holders, cigarette holders, pipe cleaners, and filters.

PAR. 2. Respondent, in the course and conduct of its said business, sells and distributes its products to wholesalers and to large retailers located at points in all States of the United States and the District of Columbia and causes its pipes and other merchandise to be transported from the State of New York, where manufactured, to, through, and into all of the States of the United States and the District of Columbia. Respondent is engaged in commerce between and among the several States of the United States.

PAR. 3. Respondent, in the course and conduct of its said business, is in substantial competition with manufacturers and distributors, in the State of New York and other States of the United States, who likewise manufacture, sell, and distribute in interstate commerce pipes, filters, cigar and cigarette holders, and kindred products used in smoking tobacco. Some of respondent's said competitors manufacture, sell and distribute between and among the various States of the United States smoking pipes and filters, for use in said pipes, which said filters are similar in design and intended for the same purposes as the filters so manufactured, sold, and distributed by respondent, and with such manufacturers and distributors respondent is in direct and substantial competition.

PAR. 4. Respondent has adopted and used as a name for its pipe, designed to be equipped with a filter, the word "Medico", and identifies the filters sold by it for use in said "Medico" pipe by the trade name Frank absorbent filter. Said filter is sold for insertion and use in the stem of the pipe for the purpose of filtering the smoke from the tobacco in the bowl before it is taken into the mouth of the smoker, and to collect and retain saliva and liquids formed or present in the smoking operation. Respondent has widely advertised said "Medico" pipe and Frank absorbent filter in all States of the United States and the District of Columbia by means of printed advertisements in magazines of national circulation and in other periodicals, by the use of display boards and window advertising, and in other ways, and in said advertisements has represented to the general public all over the United States that the "Medico" pipe contains and is to be used with a filter which is the "only filter in the world that really filters", or the "only filter that really filters", or "*THE* pipe filter that really filters".

PAR. 5. There are in existence and on the market in the United States some pipe filters other than respondent's filter which satisfactorily and efficiently serve the purpose for which pipe filters are used and which satisfactorily and efficiently serve the purpose for which

respondent's filter is designed and used. In truth and in fact, the filter manufactured and sold by respondent for use in the "Medico" pipe is not the only filter in the world that really filters, nor is it the only pipe filter that really filters.

PAR. 6. The purpose and intent of respondent in making the above representations to the public concerning the Frank absorbent filter sold for use in the "Medico" pipe has been to induce prospective purchasers to buy said pipe and filters in the false belief that there was no pipe or filter in existence on the market which would satisfactorily serve the purpose for which pipe filters are used, and for which respondent sold its said pipe filter. Such false representations so made by the respondent have, and have had, the capacity and tendency to mislead and deceive a substantial number of the members of the purchasing public, and to cause a substantial diversion of trade to respondent from its competitors who do not so falsely represent their products. By the acts and practices of the respondent, hereinabove described, substantial injury has been done and is now being done by respondent to actual or potential competition in interstate commerce.

PAR. 7. The evidence in the record in this matter fails to establish by substantial proof that the use by respondent of the trade name "Medico" for its said pipe is false and misleading.

CONCLUSION

The aforesaid acts and practices of said respondent (except the acts and practices referred to in paragraph 7 above) under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed on behalf of the Federal Trade Commission and the respondent, and the Commission having made its findings as to the facts and conclusion that the respondent, S. M. Frank & Company,

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Inc., a corporation, has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission being fully advised in the premises;

It is now ordered, That the respondent, S. M. Frank & Company, Inc., a corporation, and its officers, agents, representatives, and employees, in connection with the sale of smoking pipes and filters for use in smoking pipes, in interstate commerce, cease and desist from:

(1) Representing, or causing to be represented, directly or by implication, through advertising literature, display cards, printed advertisements in newspapers, magazines, or other periodicals, oral statements, or in any other manner, that the filter sold for use in the "Medico" pipe, and known as the Frank absorbent filter, is the only filter in the world that really filters, or that it is the only filter that really filters, or that it is *TIE* pipe filter that really filters.

(2) Representing, directly or by implication, in any manner, that there are no pipe filters other than the said Frank absorbent filter, in existence or on the market, which will efficiently and satisfactorily accomplish the ends and serve the purposes for which respondent's said filter is designed, sold, and used.

And it is hereby further ordered, That the respondent shall, within 90 days from the date of service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

DALLAS E. WINSLOW, INC., TRADING AS DURANT
MOTOR CAR COMPANY

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

Docket 2628. Complaint, Nov. 14, 1935—Decision, Sept. 21, 1936

Where a corporation engaged in sale of automobile parts and accessories as successor, elsewhere, to concern which, following purchase from receiver of unassembled parts of Durant Motor Company, theretofore assembler and distributor of Durant, Star, and Rugby cars, entered upon and widely advertised business of selling replacement parts for said automobiles, but which, as stock of parts thus bought at plant of said motor company became depleted, began purchase of new supplies from the manufacturers so that parts advertised, sold, and distributed by it came to consist, to a substantial extent, of those derived from sources other than said company—

(a) Adopted and used as a trade name, in soliciting and selling its said products, words "Durant Motor Car Company", and made use of and featured word "Durant" and purchase of authorized or genuine Durant parts and direct from factory service, through such statements in catalogues and other advertisements and advertising matter as "Buy only authorized Durant parts direct from the factory", "Prices again slashed for genuine Durant parts," " * * * We now take a pardonable pride in making the statement that today Durant owners can buy from us genuine parts for their cars MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY. Durant Motor Car Company, Lansing, Michigan," and "We've turned the plant upside down to serve you EVEN BETTER THAN BEFORE. Direct from the factory * * * Durant Motor Car Company, Lansing, Michigan";

(b) Set forth in catalogues depiction of large plant occupied by Durant Motor Car Company prior to its adjudication as bankrupt, together with title, "The Durant factory at Lansing, Michigan", and made such statements as "Every replacement part you order is shipped to you from this mammoth plant", and invited customer's cooperation by purchasing all parts made from it so as to assist in maintaining "this most important and economical direct factory service", and invited prospective purchasers to "Send all orders for Star parts direct to the factory. Durant Motor Car Company, Lansing, Michigan";

Notwithstanding fact receiver's bill of sale of unused parts did not convey last-named company's good-will or right to use its name, and none of parts thus advertised, sold, and distributed were made by such corporation or by its predecessor nor, in substantial portion, by the Durant Motor Company, and neither it nor its predecessor owned or operated any factory wherein such parts were fabricated;

With tendency and capacity to confuse, mislead and deceive purchasers into belief that it was the Durant Motor Car Company or successor thereto,

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and to divert trade to it from competitors; to the substantial injury of competition throughout the States:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Franklin K. Lane, of Washington, D. C. and *Lightner, Crawford, Sweeny, Dodd & Toohy*, of Detroit, Mich., for respondent.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that Dallas E. Winslow, Inc., a corporation, trading as Durant Motor Car 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, states its charges in that respect as follows:

PARAGRAPH 1. Dallas E. Winslow, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, trading as Durant Motor Car Company, with its principal place of business on Holden Avenue at Lincoln Street in the city of Detroit, State of Michigan. It is now and has been for several years last past engaged in the business of buying, selling, and distributing automobile parts and accessories. The respondent causes said automobile parts and accessories, when sold, to be transported from its principal place of business into and through numerous States of the United States other than the State of Michigan, to purchasers thereof at their respective points of location.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is in competition with other individuals, partnerships, and corporations engaged in the purchase, sale, and distribution of automobile parts and accessories, in commerce between and among the various States of the United States.

PAR. 3. The Durant Motor Company, a corporation, was formerly engaged, at the city of Lansing, State of Michigan, in the assembling of parts which it purchased from the manufacturers thereof, into complete cars, and in the sale and distribution of such assembled cars under the trade names of Durant, Star, and Rugby auto-

mobiles. In to wit: 1931, said company was adjudged to be insolvent, and a receiver was appointed, which receiver, acting under the authority of the United States District Court for the Southern Division of the Eastern District of Michigan, sold and conveyed its assets to one Joseph R. Deins on the 26th day of February 1932, who, on the same day, sold and conveyed said assets to Fuller-Johnson Corporation. Said assets consisted of all unassembled parts on hand, certain office furniture, machinery and bin equipment. Said last named corporation on to wit: the 5th day of June 1933, sold and conveyed said assets to the respondent herein. The respondent, Dallas E. Winslow, Inc., thereupon adopted as a trade name Durant Motor Car Company, and entered upon the business of selling and distributing replacement parts for the Durant, Star, and Rugby automobiles, and advertised the same widely under said trade name. The parts so sold and distributed by respondent at first consisted mainly of those parts purchased from the receiver by Deins and turned over at the plant, but subsequently certain of such parts became depleted, and the respondent began to order new supplies from the manufacturers thereof until the parts so advertised, sold, and distributed consisted and now consist, to a substantial extent, of parts not derived from the original Durant Company, but purchased from other sources. Subsequently respondent moved its entire business from Lansing, Mich., to Detroit, Mich. The respondent rented only a small part of the factory formerly occupied by the Durant Motor Company of Lansing, Mich., from the concern who purchased this factory from the receiver.

PAR. 4. In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its parts and equipment in interstate commerce, made the following and other similar statements and representations in catalogues, advertisements, and advertising matter distributed in interstate commerce among customers and prospective customers:

Buy only authorized Durant parts direct from the factory.

Prices again slashed for genuine Durant parts.

By these economies and reductions in materials from our suppliers, we have been able to lower our costs, which in turn has enabled us to again lower our parts prices; in some instances to the extent of cutting off 50% of our former quotations. Every item has been gone over carefully and all possible reductions made. You may therefore rest assured we have gone our limit in reducing prices in that you are now buying authorized parts just as cheaply as they can possibly be sold for. We now take a pardonable pride in making the statement

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that today Durant owners can buy from us genuine parts for their cars **MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY.**

Durant Motor Car Company, Lansing, Michigan.

We have turned the plant upside down to serve you **EVEN BETTER THAN BEFORE.** Direct from the factory. * * * Durant Motor Car Company, Lansing, Michigan.

In one of respondent's catalogues there appears a pictorial representation of the large plant occupied by the Durant Motor Car Company of Michigan prior to its adjudication of insolvency, and beneath is the title:

The Durant Factory at Lansing, Michigan.

Every replacement part you order is shipped to you from this mammoth plant.

We ask your cooperation by purchasing from us **ALL** parts needed by you, as thereby you assist in maintaining for your benefit, as well as ours, this most important and economical direct factory service.

Send all orders for Star parts direct to the factory.

PAR. 5. In truth and in fact, the use of the trade name "Durant Motor Car Company" has the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the respondent is the Durant Motor Car Company or its successor, although the decree of the United States Court for the Southern Division of the Eastern District of Michigan, on the 26th day of February 1932, did not authorize the receiver to convey to the purchaser thereof the good-will or name of said Durant Motor Company, nor did the bill of sale executed by said receiver convey such good-will or right to the use of said name.

In truth and in fact, none of the parts so advertised, sold and distributed, were manufactured by the Durant Motor Company or by the respondent, Dallas E. Winslow, Inc., and respondent did and does not own, operate, or control any factory wherein any such parts were or are fabricated.

PAR. 6. There are, among the competitors of the respondent, many who do not manufacture the automobile parts and accessories distributed by them, and do not in any way falsely represent that they do manufacture said parts and accessories, and do not in any way falsely represent the source from which said parts and accessories were obtained by said competitors for resale. There are among the competitors of the respondent, many who do not in any way represent that the automobile parts or accessories sold by them were manufactured by or purchased from the manufacturer of the automobiles for which said parts and accessories were designed or are sold. There

are likewise many among the competitors of the respondent that do not in any way represent that they own, operate, or control the factory or plant in which the automobile parts and accessories sold by them are manufactured.

PAR. 7. The foregoing false and misleading statements and representations on the part of the respondent serve as inducements for a substantial number of purchasers to buy the automobile parts and accessories offered for sale and sold by the respondent, and have a tendency and capacity to, and do, divert a substantial volume of trade from the competitors of the respondent engaged in similar businesses, to the respondent, with the result that substantial quantities of said automobile parts and accessories sold by the respondent are sold to the consuming public on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 8. The above alleged 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, 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 November 14, 1935, issued and on November 18, 1935, served its complaint in this proceeding upon the respondent, Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Thereafter, on December 23, 1935, respondent filed its answer to said complaint through its attorneys. Subsequently, on August 25, 1936, the day set for hearing, the respondent through its attorneys filed a motion to withdraw said answer and to file in lieu thereof a substitute answer attached thereto. Respondent also executed a stipulation as to the facts. The said substituted answer admits all of the allegations of the complaint and consents that without further evidence or other intervening procedure the Commission may issue and

serve upon respondent findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of the law charged in the complaint. The facts so stipulated embrace all of the allegations of the complaint and also respondent in said stipulation consented to the entry of an order to cease and desist based upon said stipulated facts. The Commission thereafter granted respondent's motion to withdraw its original answer, and received and filed respondent's substitute answer. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, substituted answer and stipulation as to the facts, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Dallas E. Winslow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and doing business under the trade name and style of Durant Motor Car Company, with its principal place of business located at the city of Detroit, in the State of Michigan. It is now and, for more than one year last past, has been engaged in the sale of automobile parts and accessories, in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from its place of business in the State of Michigan to purchasers thereof located in a State or States of the United States other than the State of Michigan. In the course and conduct of its business, Dallas E. Winslow, Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. Durant Motor Company, a Michigan corporation, was formerly engaged, at the city of Lansing, Michigan, in the assembling of parts which it purchased from the manufacturers thereof, into complete cars and in the sale and distribution of such assembled cars under the trade names of "Durant," "Star," and "Rugby" automobiles. In the year 1931, said company was adjudged to be insolvent and a receiver was appointed, who, in disposing of the assets, sold and conveyed to Winslow-Baker-Meyering Corporation all the unassembled parts on hand at the Durant Company's plant. Said Winslow-Baker-Meyering Corporation then entered upon the business of selling and distributing replacement parts for the three auto-

mobiles named, and advertised the same widely. The parts so sold and distributed consisted, at first, entirely of those purchased from the receiver and turned over at the plant; but as time passed the stock of certain of such parts became depleted, and the selling and distributing corporation began to order new supplies from the manufacturers thereof, until the parts so advertised, sold, and distributed consisted, and now consist, to a substantial extent of parts not derived from the Durant Company but purchased from other sources. Winslow-Baker-Meyering Corporation has now been succeeded by Dallas E. Winslow, Inc., and its place of business has been removed from Lansing, Mich., and is now located at Detroit, Mich.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, Dallas E. Winslow, Inc., in soliciting the sale of and selling its said products in interstate commerce, made the following and other similar statements and representations in catalogues and other advertisements and advertising matter distributed in interstate commerce among customers and prospective customers:

Buy only authorized Durant parts direct from the factory.

Prices again slashed for genuine Durant parts.

By these economies and reductions in materials from our suppliers, we have been able to lower our costs, which in turn has enabled us to again lower our parts prices; in some instances to the extent of cutting off over 50% of former quotations. Every item has been gone over carefully and all possible reductions made. You may therefore rest assured we have gone our limit in reducing prices and that you are now buying authorized parts just as cheaply as they can possibly be sold for. We now take a pardonable pride in making the statement that today Durant owners can buy from us genuine parts for their cars **MORE CHEAPLY THAN EVER BEFORE IN DURANT HISTORY.** Durant Motor Car Company, Lansing, Michigan.

We've turned the plant upside down to serve you **EVEN BETTER THAN BEFORE.** Direct from the factory * * * Durant Motor Car Company, Lansing, Michigan.

In one of its catalogues, there appeared a pictorial representation of the large plant which had been occupied by the Durant Motor Car Company prior to its adjudication as a bankrupt, and beneath this, the title: "The Durant factory at Lansing, Michigan."

Every replacement part you order is shipped to you from this mammoth plant. We ask your cooperation by purchasing from us ALL parts needed by you, as thereby you assist us in maintaining for your benefit, as well as ours, this most important and economical direct factory service.

Send all orders for Star parts direct to the factory.

Durant Motor Car Company, Lansing, Michigan.

The use of the trade name of "Durant Motor Car Company" had and has the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the corporation using the same is the Durant Motor Car Company or the successor of the Durant Motor

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Company, although the bill of sale from the receiver conveying the title to the unused parts did not convey the good will of the Durant Motor Company or the right to use its name; none of the parts so advertised, sold and distributed were manufactured by Winslow-Baker-Meyering Corporation, or by Dallas E. Winslow, Inc., nor were a substantial portion of said parts manufactured by Durant Motor Company; and neither said Winslow-Baker-Meyering Corporation nor said Dallas E. Winslow, Inc., owned or operated any factory wherein such parts were fabricated.

PAR. 4. The use of the aforesaid trade name and advertisement by the respondent as set forth in the foregoing paragraphs has had the capacity and tendency to divert trade to said respondent from competitors. Competition throughout the various States of the United States has been substantially injured by said respondent through the use of or by means of such representations and statements.

CONCLUSION

The aforesaid acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in 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."

ORDER TO CEASE AND DESIST

The respondent, Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, having heretofore on December 23, 1935, filed answer herein denying the material allegations of the complaint, and, subsequently on the 25th day of August 1936, respondent having filed with the Commission a motion that it be permitted to withdraw said answer and be permitted to file in lieu thereof its substituted answer attached to said motion, and respondent having also executed a stipulation as to the facts in lieu of testimony; and the Commission having duly considered said motion, substituted answer and stipulation as to the facts, and being fully advised in the premises;

It is hereby ordered, That the said motion be and the same is hereby granted, that the said answer be and the same is hereby withdrawn, that said substituted answer be, and the same is hereby filed in lieu of said answer so withdrawn.

And the respondent in and by its substituted answer having admitted the allegations contained in the complaint, having consented

that the Commission make its findings as to the facts and conclusion from the facts stipulated, and having consented to the entry, issuance, and service upon it of an order to cease and desist from the practices alleged in the complaint; and the Commission being fully advised in the premises and having made its findings as to the facts and conclusion that respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is hereby further ordered, That respondent Dallas E. Winslow, Inc., a corporation trading as Durant Motor Car Company, its officers, agents, representatives, and employees in connection with soliciting the sale of and selling its automotive parts and equipment in interstate commerce, do forthwith cease and desist from:

1. Directly or indirectly using or causing to be used, the trade name "Durant Motor Car Company", or "Durant Motor Company", or any other word or similar combination of words as a trade name for its business.

2. Directly or indirectly using or causing to be used, the word "Durant" in any way which may have the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that the respondent is the successor of the Durant Motor Company.

3. Representing directly or indirectly through advertisements, or on stationery, invoices, and other printed matter, or in any other way that its automotive parts and equipment are "authorized Durant parts direct from the factory", "genuine Durant parts", "direct factory service", or from employing similar statements and representations which may have the tendency and capacity to confuse, mislead, and deceive purchasers into the belief that all of the parts so advertised, sold, and distributed are or were derived from the Durant Motor Company.

4. Representing directly or indirectly through the use of the word "factory" either independently or in conjunction with any other word or words, or with any pictorial representations, in its advertising matter, or in or through other means, that respondent owns, operates, or controls any factory wherein its products are made or fabricated in any way, when such is not the fact.

It is further ordered, That the 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

23 F. T. C.

IN THE MATTER OF

J. H. CASEY, TRADING AS J. H. CASEY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2665. Complaint, Dec. 19, 1935—Decision, Sept. 21, 1936*

Where an individual engaged in manufacture, sale and distribution of a certain medicine or remedy under designation "Casey's Compound"; in advertising same through pamphlets and other trade literature—

- (a) Represented that said product was a cure or competent treatment for rheumatism, arthritis, neuritis, and other related ailments, through such statements as "Why suffer from rheumatism, neuritis and arthritis", and had "brought lasting relief to hopeless sufferers when all other tried remedies had failed", and had "accomplished marvelous results in relieving certain forms of arthritis and various other forms of rheumatic ailments, lumbago, aches and pains", facts being it had little, if any, therapeutic value in treatment of ailments mentioned and was not a proper, suitable, and efficient remedy or treatment therefor, and had not, as claimed, accomplished any "marvelous" or other beneficial results;
 - (b) Falsely represented that said product rid the blood and system of toxic poisons and excess acidity and stimulated glands to normal functioning and improved the blood circulation and enabled stomach and other organs to function naturally, supplying them with nature's own tonic, etc., and that it was useful or beneficial in "treating bronchial asthma and eczema"; and
 - (c) Referred to said product on bottles and cartons in which shipped as an "alterative", notwithstanding the fact that it was not a medicine or treatment which gradually induces a change and restores healthy functions, etc.;
- With effect of misleading and deceiving public and particularly that portion thereof suffering from various diseases and ailments referred to, through creating erroneous impression and belief that by purchasing and using said product, they would be benefited or cured of such diseases, etc., and of inducing substantial portion of purchasing public, in such erroneous and mistaken beliefs, to buy substantial quantity of said preparation, and of unfairly diverting thereby trade to him from other individuals, concerns, etc., selling similar or like products and remedies, or those designed and intended for treatment of similar diseases, etc., but honestly and truthfully labeled and represented as to their efficiency in treatment thereof; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John W. Hilldrop for the Commission.

Mr. Frederick H. Drake, of Portland, Oreg., for respondent.

COMPLAINT

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

Complaint

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that J. H. Casey, an individual trading as J. H. Casey 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 to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, J. H. Casey, is an individual trading and doing business as J. H. Casey Company, with his principal place of business located at Portland, Oreg., and is engaged in the manufacture, sale, and distribution in interstate commerce of a certain product, medicine, or remedy known as "Casey's Compound", which he advertises in manner and form as hereinafter set out, as a cure, remedy, and treatment for rheumatism, arthritis, neuritis, and other related ailments, and which "Casey's Compound" when sold the respondent ships or causes to be shipped from his place of business in Portland, Oreg., to purchasers thereof located in States of the United States other than the State of Oregon. Respondent in the course and conduct of his said business was and is in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in interstate commerce of products intended for similar uses.

PAR. 2. In the course and conduct of his said business, the said respondent, J. H. Casey, in soliciting the sale and selling of his said product, to wit, Casey's Compound, in interstate commerce, advertised same by means of pamphlets which he mailed and otherwise distributed in interstate commerce, in which his said product, Casey's Compound, was described, represented, advertised, and designated as follows, to wit: "Why suffer from rheumatism, neuritis, arthritis", and "Casey's Compound has brought lasting relief to hopeless sufferers when all other tried remedies had failed"; thereby implying and endeavoring to create the impression in the minds of those suffering from said diseases that his said product, Casey's Compound, was a good, proper, and efficient treatment or remedy for rheumatism, neuritis, and arthritis, and that it has brought and will bring relief to sufferers therefrom when all other remedies have failed, when in truth and in fact respondent's said product, Casey's Compound, has little if any therapeutic value in the treatment of rheumatism, neuritis, and arthritis and has not "brought lasting relief to hopeless sufferers when all other tried remedies had failed".

In advertising and representing its said product by means of the said pamphlets circulated in interstate commerce as aforesaid, the

respondent made and makes the following statements and representations of and concerning his said product, Casey's Compound, as follows: "Rids the blood and system of toxic poisons, excess acidity, and stimulates the glands to normal functioning which then allows nature to build and keep up a healthy body"; "It (meaning his said product, Casey's Compound) improves the blood and its circulation, enabling the stomach, liver and kidneys to function naturally, supplying every internal organ with nature's own tonic"; "Not only stops an excess of uric acid from forming but aids in its removal"; and "Useful in treating bronchial asthma and eczema"; when in truth and in fact respondent's said product does not rid the blood and system of toxic poisons or excess acidity, nor does it stimulate the glands to normal functioning thereby allowing nature to build and keep up a healthy body, nor does it improve the blood and its circulation, thereby enabling the liver, kidneys, and stomach to function naturally, nor does it supply every internal organ with nature's own product, nor does it stop an excess of uric acid from forming, nor aid in its removal, and it is not useful nor has it much, if any, therapeutic value in the treatment of bronchial asthma and eczema.

In a certain other and later pamphlet which is distributed by respondent in interstate commerce, the following statements and representations are made of and concerning respondent's said product, to wit, Casey's Compound: "Casey's Compound has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments, lumbago aches and pains", when in truth and in fact neither "marvelous" nor any other beneficial results have accrued to any person or persons afflicted with these ailments or diseases by the use of respondent's said product for arthritis, rheumatic ailments, lumbago aches and pains, and respondent's said product has little if any therapeutic value in the treatment thereof. The bottles and cartons in which said product was packed and shipped by respondent in interstate commerce, referred to said product as "Casey's Compound, An Alterative"; meaning thereby, in the use of the word "Alterative", a medicine or treatment which gradually induces a change and restores healthy functions without sensible evacuations, when in truth and in fact respondent's said product is not an alterative.

PAR. 3. The foregoing misrepresentations and exaggerations in advertisements published and distributed by respondent in manner and form as aforesaid in interstate commerce are calculated to and do have a tendency and capacity to and do mislead and deceive the public, and particularly that portion thereof which is suffering from the various diseases and ailments hereinbefore set out, by creating in the

minds of the public, and especially that portion of the public suffering with said diseases, the erroneous impression and belief that by purchasing and using respondent's said product, to wit, Casey's Compound, they will be benefitted or cured of said diseases and ailments; and also have the tendency and capacity to and do unfairly divert trade to respondent from other individuals, corporations, associations, and firms selling and distributing in interstate commerce similar or like products and remedies to that of respondent's Casey's Compound, but which are honestly and truthfully advertised and labelled by such competitors.

PAR. 4. The acts and things done as herein alleged by respondent are to the prejudice of the public and the 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," 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 December 1935, issued and served its complaint in this proceeding upon the respondent, J. H. Casey, trading as J. H. Casey Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Frederick H. Drake, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint (respondent having filed no brief and having waived oral argument); and the Commission having duly considered the same, and being now 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, J. H. Casey, is an individual, trading and doing business as J. H. Casey Company, with his principal place of business located at Portland, Oreg. He is engaged in the manufacture, sale, and distribution, in interstate commerce, of a certain product, medicine or remedy known as "Casey's Compound", which he advertises, as hereinafter set out, as a cure, remedy, and treatment for rheumatism, arthritis, neuritis, and other related ailments. When orders are received for said "Casey's Compound", the respondent ships, or causes it to be shipped from his place of business in Portland, Oreg., to the respective purchasers thereof located in States of the United States other than the State of Oregon. Respondent, in the course and conduct of his said business was, and is, engaged in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distribution of products intended for similar use, in commerce among and between the various States of the United States.

PAR. 2. The respondent, J. H. Casey, is not a physician, has never studied medicine and does not know what constitutes a proper and suitable treatment or remedy for various ailments and diseases of the human body. He is, therefore, not competent to make a diagnosis and is not competent to prescribe for various ills and diseases, such as rheumatism, arthritis, neuritis, and other related ills.

PAR. 3. In the course and conduct of his business, the said respondent, J. H. Casey, in soliciting the sale of, and in selling his said product, to wit: "Casey's Compound," in interstate commerce, advertises same by means of pamphlets and other advertising literature which he mailed and still mails, and otherwise has distributed and still distributes in interstate commerce, in which he makes the following statements:

Why suffer from rheumatism, neuritis, and arthritis?

and:

Casey's Compound has brought lasting relief to hopeless sufferers when all other tried remedies had failed.

The purport, tenor, meaning, and implication of the foregoing words and phraseology in the said advertisements of the respondent are that the said product was, and is, a good, proper and efficient treatment or remedy for rheumatism, neuritis, and arthritis. In truth and in fact, respondent's said product "Casey's Compound" has little, if any, therapeutic value in the treatment of rheumatism, neuritis, and arthritis, and is not a proper, suitable, and efficient treatment or remedy for said diseases.

PAR. 4. In advertising and representing his said product "Casey's Compound" by means of the said pamphlets circulated in interstate commerce as aforesaid, the respondent, J. H. Casey, has made, and still is making, the following other statements and representations of and concerning his said product:

* * * rid the blood and system of toxic poisons, excess acidity, stimulate the glands to normal functioning which then allows nature to build and keep a healthy body. It (meaning his said product "Casey's Compound") improves the blood and its circulation, enabling the stomach, liver and kidneys to function normally, supplying every internal organ with nature's own tonic. Not only stops an excess of uric acid from forming, but aids in its removal. Useful in treating bronchial asthma and eczema.

The respondent has also made and continues to make the following representations concerning his said product, "Casey's Compound":

Useful in treating bronchial asthma and eczema.

The statements with reference to the efficacy of "Casey's Compound," as set out in this paragraph, serve as representations that the use of said product will rid the system of the user of toxic poison and excess acidity; that it will aid the user's glands to function naturally and enable nature to build up a healthy body; that its use will improve the blood and its circulation and thereby enable the stomach, liver and kidneys to function naturally; that said product supplies every internal organ of the human body with nature's own products; that it prevents an excess of uric acid from forming and aids in its removal; that it is useful and has therapeutic value in the treatment of bronchial asthma and eczema; and that it is a fit, suitable, proper, and efficient remedy or treatment for the maladies and diseases mentioned in this paragraph.

The use of said "Casey's Compound" does not rid the system of any toxic poison or excess acidity and its use does not aid glands to function naturally. The use of "Casey's Compound" does not improve the blood and its circulation so as to enable the stomach, liver, and kidneys to function naturally where said organs have not been previously functioning naturally. Said product does not supply any internal organ with nature's own product and it does not prevent an excess of uric acid or aid in the removal of said acid. It is not useful and it has no therapeutic value in the treatment of bronchial asthma and eczema and it is not a fit, suitable, proper, or efficient remedy or treatment for the various maladies or diseases listed herein.

PAR. 5. In the course and conduct of his said business, the respondent, J. H. Casey, in a certain other pamphlet which was, and is, distributed by respondent in interstate commerce, made and makes the

following statements and representations of and concerning "Casey's Compound":

Casey's Compound has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments, lumbago aches and pains.

In truth and in fact, neither "marvelous" nor any other beneficial results have accrued to any person or persons afflicted with various forms of arthritis, rheumatism or lumbago aches and pains through the use of "Casey's Compound" and said product is not a fit, suitable, proper or efficient remedy or treatment for said diseases or conditions.

PAR. 6. On the bottles and cartons in which said product of respondent was and is packed and shipped by respondent in interstate commerce, respondent heretofore has referred to and still refers to his said product "Casey's Compound" as "an alterative," meaning thereby that his said product is a medicine or treatment which gradually induces a change, and restores healthy functions without sensible evacuations, when in truth and in fact, respondent's said product "Casey's Compound" is not, nor has it ever been, an alterative.

PAR. 7. Respondent's said remedy, "Casey's Compound," is composed of the following ingredients:

Iodide of Potassium
Sarsaparilla
Oil of Wintergreen
Oil of Anise
Licorice
Sassafras and simple syrup

None of said ingredients, either used separately or in combination with each other, or all taken together as a combination, have the therapeutic value claimed and represented by the respondent in his advertising literature, as herein set out, and said ingredients, as above set out, do not constitute a fit, proper, or efficient treatment or remedy for any of the diseases or maladies of the human body claimed and represented by the respondent to be benefited or entirely relieved or cured through the use of "Casey's Compound."

PAR. 8. The foregoing misrepresentations and exaggerations, in advertisements published and distributed by respondent in manner and form as aforesaid, in distributing his product in interstate commerce, are calculated to, and do, have a tendency and capacity to, and do, mislead and deceive the public, and particularly that portion thereof which is suffering from the various diseases and ailments hereinbefore set out, by creating in their minds the erroneous impression and belief that by purchasing and using respondent's said product, "Casey's Compound," they will be benefited or cured of said diseases and ail-

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ments. A substantial portion of the purchasing public, acting on said erroneous and mistaken beliefs, induced by the representations of the respondent as aforesaid, have purchased a substantial quantity of respondent's product, "Casey's Compound." As a result thereof, trade has been unfairly diverted to the respondent from other individuals, corporations, associations, and firms selling and distributing, in commerce as hereinabove set out, similar or like products and remedies, or products and remedies designed and intended for the treatment of similar diseases, ailments, and conditions of the human body, but which are honestly and truthfully advertised, labeled, and represented as to their efficacy in the treatment of said diseases, ailments, and conditions. As a consequence thereof, substantial injury has been, and is now being, done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent, J. H. Casey, trading as J. H. Casey Company, 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief in support of complaint filed herein (respondent not having filed brief in opposition to the complaint and having waived oral argument), and the Commission having made its findings as to the facts and its conclusion that the 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, J. H. Casey, as an individual, and trading as J. H. Casey Company, or trading under any other trade name, or otherwise, his representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of the product or remedy known as "Casey's Compound", or any product of substantially the same composition and ingredients

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sold under the name "Casey's Compound" or any other name, in interstate commerce, or in the District of Columbia, do cease and desist from representing through pamphlets, circulars, advertisements in newspapers, journals, magazines, or other publications or periodicals, radio broadcasts, or any other form of advertising, or in any other form or manner whatever:

(1) That said product is a cure, remedy or competent treatment for rheumatism, arthritis, neuritis, and other related ailments, or that said product has any therapeutic value in the treatment of said diseases and ailments;

(2) That said product has brought lasting relief to hopeless sufferers when all other tried remedies had failed;

(3) That said product rids the blood and system of toxic poison, excess acidity and stimulates the glands to normal functioning; that it improves the blood in its circulation and enables the stomach, liver, and kidneys to function naturally; that it supplies every internal organ with nature's own tonic; that it stops an excess of uric acid from forming and aids in its removal; and that it is useful or beneficial in treating bronchial asthma and eczema;

(4) That said product has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments and lumbago aches and pains;

(5) That said product is an alterative;

(6) That persons suffering from any of the diseases, ailments and maladies, hereinabove numerated, will be benefited or afforded any relief by the use of said product as a remedy and treatment for said diseases, ailments and maladies.

It is further ordered, That the 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

FANNIE CHANOWITZ, TRADING AS ATLAS PRODUCTS
COMPANY

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

Docket 2668. Complaint, Dec. 23, 1935—Decision, Sept. 21, 1936

Where an individual engaged in sale through canvassing agents or salesmen of incandescent lamps, customarily demonstrated by them to prospective purchasers through comparing illumination thereof with that of lamps then in use by prospect and having same indicated wattage consumption—

- (a) Sold lamps, wattage consumption or measurement of which was greater than that indicated thereon, after allowing for four percent tolerance recognized in industry in legibly and durable marking, in accordance with established and universal custom among manufacturers and dealers, voltage and wattage on each and every incandescent lamp or bulb sold;

With result that prospective purchasers were thereby deceived and misled into believing that said individual's lamps were of same measurement or less, and produced more light, than lamps of competitors then in use by them, and to cause said customers to use such falsely labeled lamps and discard the truthfully labeled competitive products, and of thereby causing injury to competitors by diverting trade from them to said individual and causing purchasers to pay bigger light bills due to consumption by such falsely labeled lamps of more current than should have been consumed by them had their watt measurements been that labeled thereon; and

- (b) Sold her said lamps with such watt measurement stamped thereon in such a way that same was readily and easily rubbed off and became illegible; after ordinary handling, and it became impossible to determine, without test, what actual measurement of lamp was;

With result of destroying evidence which would have enabled said individual's competitors, in their endeavor to sell their products in competition with such falsely marked lamps, to convince customers or prospective customers of falsity of marking thereon:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Herman B. J. Weckstein, of Newark, N. J., 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 Fannie

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Chanowitz, trading as the Atlas Products 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, Fannie Chanowitz, is an individual doing business, at all times since on or about June 24, 1927, under the trade name Atlas Products Company and having at all times a place of business in the city of Newark, State of New Jersey.

PAR. 2. During all the times above mentioned the respondent has been and still is engaged in the business of selling incandescent lamps made and sold for general lighting service for operation in connection with electric current supplied by public service corporations. The respondent during said times has sold and caused its incandescent lamps to be sold, among other ways by canvassing agents or salesmen to members of the public, purchasers of incandescent lamps, located in various States of the United States other than the State of New Jersey, or the State of origin of the shipment. The respondent has caused her incandescent lamps when so sold by her to be transported, by mail or otherwise, from New Jersey, or that State of origin of the shipment, to the purchasers referred to above, located in said other States.

PAR. 3. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged in the sale of incandescent lamps made and sold for general lighting service for operation with electric current supplied by public service corporations, to purchasers, members of the public for use or consumption, located in various States of the United States other than the State of the seller or the State of origin of the shipment.

PAR. 4. The respondent, in the sale of incandescent lamps is and has been in substantial competition in interstate commerce with other individuals, firms, and corporations, referred to as sellers in paragraph 3 hereof, during all times mentioned and referred to in paragraph 1 hereof.

PAR. 5. Substantially at all times above mentioned and referred to, and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general lighting service in the respective communities served by them, variously for the particular unit, on either 110, 115, or 120 volt multiple circuits, as the case may be. During said times all the members of the industry engaged in the

sale of electric lamps or bulbs have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

PAR. 6. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, that, at the times they are displayed or offered for sale or sold by dealers to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or branded, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in that statement of the number of watts with which they are marked or branded. The tolerances in the watt measurement, above referred to, are and have been known to and recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States during all the times above mentioned and referred to. And, the tolerances in the watt measurements of incandescent lamps manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

PAR. 7. The tolerance allowed in the statement of the number of watts with which incandescent lamps are and have been marked or branded during the times mentioned and referred to, has been four percent above or below that marked or branded on the lamp.

PAR. 8. During all the times above mentioned the respondent has caused the incandescent lamps which she sold in the manner hereinbefore stated, to be exhibited by her salesmen or agents to purchasers and prospective purchasers, labelled, marked, or branded with less watt measurements than the actual watt measurement which was much greater than the watt measurement with which they were labelled, marked, or branded after allowing for the tolerance hereinbefore referred to. And the respondent knew, or with ordinary care should have known, her lamps were falsely branded or labelled with respect to their watt measurement.

PAR. 9. That during all the times above mentioned and referred to, and for many years prior thereto, the public has relied upon the accuracy of the wattage and voltage as the same was branded or marked

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upon the lamp by the manufacturer or seller thereof, otherwise purchasers or users thereof would have no practical way of knowing the wattage or voltage of the incandescent lamp purchased.

The amount of electric current consumed in the use of incandescent lamps varies, among other things, according to the watt measurement of the incandescent lamps.

PAR. 10. During the times above mentioned the respondent through her agents and salesmen has caused demonstrations of her incandescent lamps to be made to members of the public. In such demonstrations the lamp of the respondent labelled with the same watt measurement as that of the lamp then in use by a prospective purchaser would be compared to show the greater amount of light given by the respondent's lamp over the one then in use. When in truth and in fact the respondent's lamp was of a much greater watt measurement than the lamp with which it was compared, although branded or labelled the same. Prospective purchasers were thereby deceived and misled into believing that respondent's lamp was of the same watt measurement and produced more light, than lamps of competitors then in use by prospective purchasers.

PAR. 11. During all the times above mentioned respondent sold to the public incandescent lamps on which the markings indicating the watt and volt measurements were easily, purposely or accidentally, by wear and tear obliterated or erased, and the evidence thereby destroyed, which would show to be false the representations respecting the watt and volt measurements of the lamps; contrary to the usual custom in marking or branding the watt and volt measurements of incandescent lamps employed by the members of the industry engaged in making and selling incandescent lamps.

PAR. 12. The misbranding of the lamps or bulbs, and the method used in branding or marking said lamps or bulbs by the respondent, as set forth in paragraphs 8 and 9 heretofore, had the capacity and tendency to deceive and mislead purchasers or prospective purchasers of electric lamps or bulbs; and by reason of such misrepresentations the public was deceived and misled into purchasing the respondent's lamps or bulbs, to its injury and prejudice, in place of electric lamps or bulbs sold by respondent's competitors, and thereby trade in electric lamps or bulbs was diverted to the respondent from her competitors. Thereby substantial injury was done by the respondent to substantial competition in interstate commerce.

PAR. 13. The above acts and things done and caused to be done by the respondent were and are, each and all, to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent

Findings

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 December 23, 1935, issued and served its complaint in this proceeding upon respondent Fannie Chanowitz, trading as the Atlas Products Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent failing to file any answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by James I. Rooney, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and evidence in support of the complaint; no answer having been filed by the respondent who through her counsel, Herman B. J. Weckstein, orally waived her right to file an answer to the complaint, to file briefs in opposition thereto, or to be heard in oral argument before the Commission, all of which appears of record; and the Commission having duly considered the same and being now 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. Fannie Chanowitz is an individual doing business since June 24, 1927, up to the present time under the trade name of Atlas Products Company, with her principal place of business in the city of Newark, State of New Jersey.

PAR. 2. Respondent has been, during all the time above mentioned and still is, engaged in the sale of incandescent lamps made and sold for operation with electric current supplied by public service corporations in general lighting service. Respondent sells her lamps by means of canvassing agents or salesmen who travel throughout the various States of the United States, taking orders for and demonstrating said lamps to the purchasers thereof. The respondent caused

said lamps when sold by her to be transported from the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey.

PAR. 3. There are other individuals, firms, and corporations located in various States of the United States engaged in the sale of incandescent lamps made and sold for the purpose as the incandescent lamps sold by said respondent, and said individuals, firms, and corporations cause the lamps when sold by them to be transported to purchasers thereof located in various States of the United States other than the State of origin of the shipment and are in competition in interstate commerce with said respondent.

PAR. 4. There is, and has been, for a number of years an established and universal custom among manufacturers and dealers of incandescent lamps in the United States, to legibly and durably mark, stamp, or brand the lamps sold by them with the words and figures indicating the voltage and wattage of each and every lamp or bulb. It is also a recognized custom in the industry that a certain variation or tolerance in the watt measurement of any lamp is allowable and that this tolerance is four percent either above or below the rating marked upon said lamp above. The amount of electric current consumed in the use of incandescent lamps varies according to the watt measurement of the lamp, thus the greater the watt measurement of a lamp, the more electricity is consumed in its use; and it is of great importance to the purchaser of incandescent lamps that the said lamp be of the same watt measurement as that marked or labeled thereon and that said marking be legibly and durably placed on said lamp so that the purchaser may know that the lamp is in truth and in fact a lamp of the watt measurement indicated thereon.

PAR. 5. The incandescent lamps sold by respondent in the manner hereinbefore stated were in fact, in nearly every instance, of a greater watt measurement than that indicated upon said lamps after allowing for the tolerance hereinbefore referred to, and the watt measurement stamped upon said lamps is not of a durable nature but was done in such a way that the same was readily and easily rubbed off, so that after ordinary handling of said lamp, it became illegible and it became impossible to determine, without having the same submitted to a test, what the actual watt measurement of said lamps was. It was the custom of the agents of said respondent to demonstrate to prospective purchasers, the lamps of the respondent labeled with the same watt measurement, or less, as that of a lamp then in use by said prospective purchaser, in order to show the greater amount of light given by respondent's lamp over the one then in use, when in truth and in fact, respondent's lamp was of a

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much higher watt measurement than the lamp with which it was compared, although branded and labeled the same, or less. Prospective purchasers were thereby deceived and misled into believing that the respondent's lamp was of the same watt measurement, or less, and produced more light than the lamps of competitors then in use by them, and to cause said customer to use the falsely labeled lamps and discard the truthfully labeled lamps of the competitors, thereby causing not only injury to the competitors, by diverting trade from said competitor to the respondent, but causing the purchaser to pay a greater electric light bill because of the fact that the lamps which were falsely labeled by the respondent consumed a greater amount of electric current than they should have consumed had the lamps been of the watt measurement labeled thereon. The want of durability in the marking of lamps sold by the respondent had the effect of destroying the evidence which would have enabled the competitors of respondent, in their endeavor to sell lamps in competition with respondent's falsely marked lamps, to convince customers or prospective customers of the falsity in the marking upon respondent's lamps.

CONCLUSION

The aforesaid acts and practices of respondent, Fannie Chanowitz, 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 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, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, by James I. Rooney, counsel for the Commission; no answer or brief having been filed by the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent had violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Fannie Chanowitz, trading as the Atlas Products Company, her representatives, agents and employees, in connection with the offering for sale, sale, and distribu-

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tion of incandescent lamps in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing that said incandescent lamps are of any other watt measurement than that stamped, marked, or labeled thereon, with due regard to the permissible tolerance.

(2) Labeling, imprinting, marking, or stamping the watt measurement on said lamps in such a manner that the same shall be easily eradicated by ordinary handling of said lamps.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF

R. C. JENNER AND WILLIAM DeLAPP, DOING BUSINESS
AS JENNER MANUFACTURING COMPANY AND JENNER
SALES COMPANY

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

Docket 2863. Complaint, June 30, 1936—Decision, Sept. 21, 1936

Where two individuals engaged in business of making or assembling small, cheap electric contrivance for heating small quantities of water or other liquid, and in marketing said "Wonder Electric Water Heater"—

- (a) Advertised "Man with car to deliver and make collections. \$40.00 weekly. No selling. Must have reference and \$100.00 in cash to secure goods * * *" in "Help Wanted" or "Man Wanted" section of newspapers, and as below set forth represented in advertisements or to applicants that said two individuals had or would establish, through missionary agents or salesmen, large list of dealers in a city or vicinity, to handle said heaters on consignment, and that all that would be required of applicants would be to distribute products to replace those sold, and to make weekly collections and remittances therefor, facts being no dealers had been established nor was establishment of such a list contemplated and duties required of applicants included selling, and whole business as conducted by said individuals was fraudulent scheme to extract money through falsely representing to persons needing employment, nature of business and character and value of product and what was to be done by those answering and by themselves, and purpose of initial payment or deposit of applicant and terms of employment and salary to be paid;
 - (b) Represented that "initial deposit" required of each applicant was in lieu of temporary fidelity bond, and would be refunded in short time, facts being such "deposit" money, in most instances credited as payment for heaters shipped forthwith to depositor at price profitable to them, though in some instances retained outright, without explanation or consideration, was neither bond nor refunded;
 - (c) Falsely represented that each applicant would receive \$5 for each new dealer secured and that they would furnish servicing distributor with automobile or compensate for use of his own, facts being no such distributor was ever thus supplied or compensated; and
 - (d) Misrepresented demand on part of public for said heaters through sending employee in guise of customer to dealers or prospective dealers to make inquiry about product and purchase small number thereof and return shortly thereafter and order much larger number, thereafter left on hands of dealer and never called for;
- With result that large numbers of individuals in need of employment and relying upon truth of said representations were induced to buy quantities of said product in frequently unrealized hope of profitably reselling same to consuming public, and trade was unfairly diverted thereby to them

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from competitors engaged in distributing and selling through salesmen and dealers similar products without promoting sale thereof through false and misleading representations, plans, or methods; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Wm. T. Chantland 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 R. C. Jenner, William DeLapp, Jenner Manufacturing Company, and Jenner Sales Company, hereinafter referred to as "respondents," have been, and are now, 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. Respondents R. C. Jenner and William DeLapp are copartners doing business and trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company with their principal place of business at 31 Allison Street, Pontiac, Mich. They are now, and for some time have been engaged in buying parts, assembling them, and selling in interstate commerce, as herein set out, a small electric water heater called "Wonder Electric Water Heater" alleged to be useful in heating small quantities of water and other liquids.

PAR. 2. Said respondents being engaged in business as aforesaid caused said heater when sold to be transported from their place of business in the State of Michigan to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said heaters distributed and sold by them between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling electric water heaters in commerce among and between the various States of the United States.

In the course and operation of said business and for the purpose of inducing purchase of said heaters respondents advertised in newspapers having an interstate circulation in the "Help Wanted" or "Man Wanted" section in letter or substance as follows:

Man with car to deliver and make collections. \$40.00 weekly. No selling. Must have reference and \$100.00 in cash to secure goods. Give phone number if possible to Box N-6 care of News.

Said advertisement was false and misleading and a fraud upon those in need of employment who answered it. The whole business as conducted by respondents is a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the nature of respondents' business and the character and value of their product, the character of the work to be performed, the missionary work that will be performed by respondents, the purpose of an initial payment or deposit of from \$60.00 to \$100.00 by applicant for work, the terms of employment, and the salary to be paid.

Among the misrepresentations made are:

1. That respondents are manufacturers whereas they are merely assemblers of a cheap and inefficient small electric water heater contrivance.

2. That respondents have or will establish through missionary salesmen a large list of dealers in a city handling their heaters on consignment, whereas no such list exists or is contemplated.

3. That the initial "deposit" required of each applicant is a temporary fidelity surety bond, whereas the money is either retained by respondents outright without return, or the applicant is furnished for it a supply of the heaters, usually two dozen, at a price highly profitable to respondents.

4. That applicant will receive \$5.00 for each new dealer he secures, whereas no such sum has ever been paid.

5. That respondent will furnish the servicing distributor with an automobile or compensate him for the use of his own, whereas neither is done by respondents.

6. In some instances respondents sent representatives to dealers to inquire for a supply of respondents' heaters, who then buy any small stock and place orders for larger additional quantities which, when bought by such dealers, are never called for.

PAR. 4. As a result of said respondents' false and misleading representations, plans, and methods as above set out, large numbers of individuals in need of employment, believing and relying upon the truth of respondents' representations as set forth in paragraph 3 hereof, have been induced to and have bought large and small quan-

tities of respondents' aforesaid "Wonder Electric Water Heater" in the hope of profitably reselling the same to the consuming public, which hopes were in many cases unrealized and said sales to these salesmen and dealers fraudulently induced and obtained by respondents and each of them as aforesaid have operated and do operate unfairly to divert trade to respondents from those of its competitors who are likewise engaged in the business of distributing and selling through the medium of salesmen and dealers, similar products in interstate commerce and who do not promote or attempt to promote the sale thereof to salesmen and dealers by false and misleading representations, plans, or methods, and as a result thereof, substantial injury has been and is now being done by respondents to competitors in commerce among and between the various States of the United States.

PAR. 5. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 30th day of June 1936, issued and served its complaint in this proceeding upon respondents, R. C. Jenner and William DeLapp, copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 18th day of September respondents filed their amended and substituted answers in which they admitted all the material allegations of the complaint to be true and stated that they have waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission having duly

considered the same, and being now 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. Formerly respondents, R. C. Jenner and William DeLapp were copartners doing business and trading under the firm names and styles of the Jenner Manufacturing Company and Jenner Sales Company, with their principal place of business in Pontiac, Mich. At this time R. C. Jenner is the sole owner of the Jenner Manufacturing Company and William DeLapp is the sole owner of the Jenner Sales Company.

The sole business engaged in by all of the respondents, insofar as this proceeding is concerned, is the business of making or assembling a small, cheap, electric contrivance for heating small quantities of water or other liquid, known as the "Wonder Electric Water Heater", and of marketing the same by the methods hereinafter set forth.

PAR. 2. Said respondents being engaged in business as aforesaid cause said heaters when sold to be transported from their place of business in the State of Michigan to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in said heaters distributed and sold by them in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling electric water heaters in commerce among and between the various States of the United States.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of said heaters respondents, either directly or through their general agents, advertised in newspapers having an interstate circulation in the "Help Wanted" or "Man Wanted" section in letter or substance as follows:

Man with car to deliver and make collections. \$40.00 weekly. No selling Must have reference and \$100.00 in cash to secure goods. Give phone number if possible to Box N-6, care of News.

PAR. 5. Said advertisements as above set out were false and misleading and a fraud upon those in need of employment who answered them. The whole business as conducted by respondents is a fraudulent scheme to extract money from persons in need of employ-

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ment by falsely representing to them the nature of respondents' business and the character and value of their product, the character of the work to be performed, the missionary work that will be performed by respondents, the purpose of an initial payment or deposit of from \$60.00 to \$100.00 by the applicants for work, the terms of employment, and the salary to be paid.

PAR. 6. Among the representations contained in the advertisements, or made to the applicants for work are:

1. That respondents have established or will establish through missionary agents or salesmen a large list of dealers in a city or vicinity to handle their heaters on consignment and that all that will be required of applicants for positions will be to distribute heaters to replace those sold and to make weekly collections and remittances for heaters that have been sold; that an initial "deposit" is required of each applicant which is represented to be in lieu of a temporary fidelity bond which would be refunded in a short time; that each applicant was to receive \$5.00 for each new dealer he secures; that respondents would furnish the servicing distributor with an automobile for his use or compensate for the use of his own.

All of these representations were deceptive and false. The facts are that no dealers had been established, nor was any such establishment of a list of dealers contemplated, and the duties required of applicant, included that of selling. The "deposit" money was not a bond, but was in some instances retained outright, without explanation or consideration, but in most instances it was credited as payment for heaters which were shipped forthwith to depositor, at a price profitable to respondents. No distributor was ever furnished with an automobile for his use, nor was any allowance paid to a distributor for the use of his own car.

2. In some instances respondents' agents sent an employee in the guise of a customer to dealers or prospective dealers to inquire about respondents' heaters. Such purported customer would buy a small number of the heaters, and would shortly thereafter return and place an order for a much larger number of heaters, which, when bought on the strength of such supposed order by the dealer from respondents' distributor, were never called for, but were left on the hands of such dealer.

PAR. 7. As a result of said respondents' false and misleading representations, plans, and methods as above set out, large numbers of individuals in need of employment believing and relying upon the truth of respondents' representations, have been induced to and have bought quantities of respondents' aforesaid "Wonder Electric Water Heater" in the hope of profitably reselling the same to the consuming

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public, which hopes were in many cases unrealized. Said sales to these salesmen and dealers, fraudulently induced and obtained by respondents and each of them as aforesaid, have operated to and do unfairly divert trade to respondents from those of their competitors who are likewise engaged in the business of distributing and selling, through the medium of salesmen and dealers, similar products in interstate commerce and who do not promote or attempt to promote the sale thereof to salesmen and dealers by false and misleading representations, plans, or methods. As a result thereof, substantial injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, R. C. Jenner and William DeLapp, copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said 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 ordered, That the respondents, R. C. Jenner, and William DeLapp, individually, and as copartners, trading under the firm names and styles of Jenner Manufacturing Company and Jenner Sales Company, their servants, representatives, agents, and employees, in connection with the advertising and offering for sale, sale, and distribution of their said electric heaters in interstate commerce or in

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the District of Columbia, do forthwith cease and desist from representing:

1. That the services required of applicants after selection by respondents, are only to make deliveries of and collections for said electric heaters and that no selling is required of said selected employees.

2. That dealers in any number have been or will be established in the city or territory in question, by the respondents or by their field agents, when in fact no such dealers have been established, and the establishment of no such dealer list is contemplated.

3. That the initial payment required of each applicant is in the nature of, or in lieu of, a temporary bond and that the sum will be refunded, when such is not the fact.

4. That the initial payment required is for anything else than payment for a certain number of their said heaters at a specified price.

5. That applicants will receive \$5.00 for each new dealer they secure, when no such sum is in fact paid or such service contemplated.

6. That applicant will be furnished a car by respondents for his use in the work, or will be given a weekly allowance in lieu of such car, when no such car is furnished or payment made or contemplated.

7. That the demand on the part of the public for their said heaters is greater than it is in fact, through the use of agents or employees who purchase small quantities of said heaters from dealers and either order additional large quantities which they do not purchase, or induce said dealers to order additional quantities in the belief that there is a demand therefor, or through any other means or subterfuge induce dealers to buy excessive quantities of heaters for which there is no substantial demand.

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

Syllabus

IN THE MATTER OF

L. W. GIBSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2766. Complaint, Apr. 15, 1936—Decision Sept. 22, 1936*

Where an individual engaged in sale and distribution of formulae and specifications for purpose of producing various products, such as cosmetics, toothpaste, hair tonic, etc., in commerce between and among the various States—

- (a) Falsely represented that he was educated in science of chemistry and had had several decades of experience in its commercial application and had devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for manufacture of his products, and had expended large sums of money in purchase of modern money-making formulae and expended large sums annually in obtaining and perfecting same and had been employed as consultant chemist and advisor to manufacturing trade for several years;
- (b) Falsely represented that he had a staff of associates who were graduates of leading American colleges and universities and possessed degrees from high institutions of learning and had had a great deal of practice and successful experience in devising formulae and manufacturing products and commodities, and had been employed because of their sound and thorough knowledge of chemistry and because they had demonstrated their ability to manufacture products successfully and teach other manufacturers every phase of successful and profitable production;
- (c) Falsely represented that he had in his establishment various departments consisting of laboratories especially equipped with modern apparatus, and that he was equipped to make analyses or develop special formulae, conduct chemical research investigations, and determine methods of salvaging waste materials;
- (d) Falsely represented that he was prepared to offer assistance to customers in securing patents on chemical processes or other subjects and had succeeded in helping exaggerated numbers of customers to establish profitable businesses, and guaranteed that his customers would make profits of \$50, or other exaggerated sums, per week; and
- (e) Falsely represented that he would give free, with orders in certain amounts, various books and pamphlets, seemingly products of establishment or of his mind, and that he had received a degree in philosophy and chemistry entitling him to use abbreviation "Ph. D." or word "Chemist" after his name, and that address "4700-4 N. Racine Avenue" was street address of his place of business, and that various telephone numbers were those of his establishment;

Facts being addressed in question was that of hotel in which he lived in a single room, and numbers listed were those of said hotel, and he had not

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received any such degree, been educated in chemistry, etc., and various statements and representations hereinbefore set forth were false;

With tendency and capacity to mislead and deceive substantial portions of purchasing public into erroneous belief that said representations were true, and with result that consuming public purchased substantial volume of his commodity, and trade was unfairly diverted to him from competitors engaged in sale of commodities of same kind and nature, and who truthfully advertised and represented character, quality, and results to be obtained from use thereof; to their substantial injury:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

Nash & Donnelly, of Washington, D. C., 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 L. W. Gibson, an individual, 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 L. W. Gibson, an individual having his place of business at 4700 North Racine Avenue, Chicago, Ill., is now and for several years last past has been engaged in the sale and distribution of formulae and specifications for the purpose of producing or manufacturing various products, such as cosmetics, toothpaste, hair tonics, cleaning and polishing compounds, soap, food products, adhesives, rat exterminators, etc., in commerce between and among the various States of the United States, and in the course of sale and distribution of the aforesaid commodities causes the same to be transported to the purchasers thereof from his place of business in the city of Chicago, State of Illinois, into and through the various States of the United States other than the State of Illinois.

PAR. 2. Respondent in the sale and distribution of the aforesaid commodities has been and is now in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce as herein set out of similar and like commodities, or commodities to be used for the same and similar purposes.

PAR. 3. In the course of his offering for sale and sale of his commodities as aforesaid, the respondent has caused and causes statements and representations to be made in advertisements, pamphlets, circulars, catalogues, and other printed matter, and on envelopes, published or distributed in the various States of the United States, to the following effect, gist, or meaning:

- (a) That the respondent was educated in the science of chemistry;
- (b) That he has had several decades of experience in its commercial application;
- (c) That he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products;
- (d) That respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years;
- (e) That respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same;
- (f) That respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities;
- (g) That said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production.
- (h) That respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus;
- (i) That respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations and to determine methods of salvaging waste materials;
- (j) That he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects;
- (k) That respondent has succeeded in helping exaggerated numbers of customers to establish profitable businesses;
- (l) That he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week;
- (m) That respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent;

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(n) That respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist" after his name;

(o) That the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment.

PAR. 4. All of the representations and statements made by the respondent in the manner indicated in paragraph 3 hereof are false and untrue and have no foundation in fact. The respondent is not educated in the science of chemistry and has not had long experience in its commercial application; he has not devoted years to collecting, studying, devising, and perfecting practical working formulae and processes for products; he has not been employed as a consultant chemist and advisor to the manufacturing trade for many years; he has not expended large sums of money in the purchase of modern money-making formulae and has not expended large sums annually in developing and perfecting the same; he has had no associates who have taken an active part in his business and who are graduates of leading American colleges or universities or who hold degrees from high institutions of learning, and who have had practical business experience; he has had no chemists associated with him, nor any departments equipped with modern apparatus; he is not equipped to make analytical analyses or to conduct research investigations for the formulation and standardization of commercial products; he has not helped an exaggerated number of customers to realize upward of \$50.00 per week in their businesses, and he has no means of knowing or learning how much such customers make, if anything; he does not give free with purchases pamphlets or books which have been prepared by him or his establishment, but rather sends to customers pamphlets or books which have been prepared by other associations or governmental agencies, and which are available to customers for nominal prices; 4700-4 N. Racine Avenue, Chicago, Ill., is not the address of any establishment or laboratory maintained by respondent but rather it is the address of a hotel in Chicago wherein respondent lives in a single room, and the telephone numbers listed are not the telephone numbers of the place of business of respondent, but are the telephone numbers of said hotel; respondent has not received any degree which would entitle him to use the abbreviation "Ph. D.", or "Chemist", in connection with his name; respondent is not prepared to offer assistance to customers in securing patents on chemical processes or any other subjects; he is not equipped to conduct investigations which would reveal methods of salvaging waste material; he does not maintain an establishment having various departments and

laboratories equipped with modern apparatus, but rather, his entire business is conducted from a single room in a hotel in Chicago which is not equipped with any modern apparatus, not even a test tube.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent in the manner hereinabove set out, were and are calculated to and have had and now have the tendency and capacity to mislead and deceive substantial portions of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of the mistaken and erroneous beliefs induced thereby, the consuming public has purchased a substantial volume of respondent's commodities, with the result that trade has been unfairly diverted to the respondent from competitors engaged in selling commodities of the same kind and nature in commerce as hereinabove set out, and who truthfully advertise and represent the character, quality, and results to be obtained from the use of their said commodities. As a result thereof, substantial injury has been and is being done by respondent to competitors in commerce, as hereinabove set forth.

PAR. 6. The above acts and practices of respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce within the meaning and intent 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 April 15, 1936, issued and served its complaint in this proceeding upon respondent, L. W. Gibson, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 24, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly con-

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sidered the same, and being now 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, L. W. Gibson, for several years last past has been engaged in the sale and distribution of formulae and specifications for the purpose of producing or manufacturing various products, such as cosmetics, tooth paste, hair tonics, etc., in commerce between and among the various States of the United States. His principal place of business is located at 4700 North Racine Avenue, Chicago, Ill. In the course of sale and distribution of the aforesaid commodities he causes the same when sold to be transported from the State of Illinois to purchasers thereof located in the various States of the United States.

PAR. 2. He has been and is in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce, as herein set out, of similar and like commodities, or commodities to be used for the same similar purposes.

PAR. 3. In the offering for sale and sale of his commodities as aforesaid, the respondent has caused and causes statements and representations to be made in advertisements, pamphlets, circulars, catalogues, and other printed matter, published or distributed in the various States of the United States, to the following effect, gist, or meaning:

- (a) That the respondent was educated in the science of chemistry;
- (b) That he has had several decades of experience in its commercial application;
- (c) That he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products;
- (d) That respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years;
- (e) That respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same;
- (f) That respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities;
- (g) That said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they

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have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production;

(h) That respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus;

(i) That respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations, and to determine methods of salvaging waste materials;

(j) That he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects;

(k) That respondent has succeeded in helping exaggerated numbers of customers to establish profitable businesses;

(l) That he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week;

(m) That respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent;

(n) That respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist," after his name;

(o) That the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment.

PAR. 4. The representations and statements made by the respondent as set forth in paragraph 3 *supra* are false and untrue and have no foundation in fact. The respondent is not educated in science and chemistry and has not had long experience in its commercial application; he has not devoted years to collecting, studying, devising, and perfecting practical working formulae and processes for products; he has not been employed as a consultant chemist and advisor to the manufacturing trade for many years; he has not expended large sums of money in the purchase of modern, money-making formulae and has not expended large sums annually in developing and perfecting the same; he has had no associates who have taken an active part in his business and who are graduates of leading American colleges or universities or who hold degrees from high institutions of learning, and who have had practical business experience; he has had no chemist associated with him, nor any departments equipped with modern apparatus; he is not equipped to make analytical analyses or to conduct research investigations for the formulation and standardization of commercial products; he has not helped a number of customers to realize upwards of \$50 a week in their business and he has no means of knowing or learning how much such customers make,

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if anything; he does not give free with purchases, pamphlets or books which have been prepared by him or his establishment; 4700 Racine Avenue, Chicago, Ill., is not the address of any establishment or laboratory maintained by respondent, but is the address of a hotel in Chicago wherein the respondent lives in a single room; the telephone numbers listed are not the telephone numbers of the place of business of respondent but are the telephone numbers of said hotel; respondent has not received any degree which would entitle him to use the abbreviation "Ph. D.," or "Chemist," in connection with his name; respondent is not prepared to offer assistance to customers in securing patents on chemical processes or any other subjects; he is not equipped to conduct investigations which would reveal methods of salvaging waste materials; he does not maintain an establishment having various departments and laboratories equipped with modern apparatus, but rather his entire business is conducted from a single room in a hotel in Chicago which is not equipped with any modern apparatus, not even a test tube.

PAR. 5. All of the statements and representations made by the respondent in the manner hereinabove set out are calculated to and have had and now have the tendency and capacity to mislead and deceive substantial portions of the purchasing public into the erroneous belief that said representations are true. As the consequence of the mistaken and erroneous beliefs induced, the consuming public has purchased a substantial volume of the respondent's commodity, with the result that trade has been unfairly diverted to the respondent from competitors engaged in selling commodities of the same kind and nature in commerce, as hereinabove set out, and who truthfully advertise and represent the character, the quality, and results to be obtained from the use of their said commodities. Substantial injury thereby has been and is being done by respondent to competitors in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, L. W. Gibson, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of

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respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, L. W. Gibson, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its formulae and specifications for the purpose of producing or manufacturing various products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That the respondent is educated in the science of chemistry; that he has had several decades of experience in its commercial application; that he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products; that respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years; that respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same; that respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities; that said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production; that respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus; that respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations, and to determine methods of salvaging waste materials; that he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects; that respondent has succeeded in helping exaggerated numbers of customers to establish profitable

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businesses; that he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week; that respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent; that respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist" after his name; that the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment, unless and until such are the facts.

It is further ordered, That the 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
GARTEN TABLE PAD COMPANY

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

Docket 2732. Complaint, Feb. 28, 1936—Decision, Sept. 25, 1936

Where a corporation engaged in manufacture of two styles of table pads of similar size, shape, and general appearance, more costly of which had a bottom covering or back composed of genuine felt, or wool fibers or wool and cotton materials, matted together in layers, compressed and shrunk, and less costly of which had inferior cotton bottom covering or back of duvetyn, velourette, or velveteen, and in sale thereof to retail stores in District of Columbia and some thirty States for resale to purchasing and consuming public—

Labeled as “felted back” miniature pads or samples of latter style or quality, left by it for exhibition on retail stores’ counters and display stands as basis for orders to be taken by retailer and forwarded to it for filling from its factory, along with “genuine felt” label samples of former, more costly style;

With capacity and tendency to confuse, mislead, and deceive substantial number of purchasing public into belief that said “felted back” pads were backed with genuine felt and with effect of causing such purchasing public to buy substantial quantities thereof in such erroneous belief, and of unfairly diverting thereby trade to it from competitors, who do not in any way misrepresent material or materials from which their said pads are made; to their substantial injury and prejudice:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. DeWitt T. Puckett 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 Garten Table Pad 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 the 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, Garten Table Pad Company, Inc., is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Pennsylvania, with its principal office at 131 Market Street, Philadelphia, Pa. It is now, and for several years last past has been, engaged in the manufacture and sale of table pads between and among the various States of the United States and in the District of Columbia. Respondent now causes, and for more than one year last past has caused, such products when sold by it to be shipped from its place of business in Philadelphia, Pa., to the purchasers thereof, some located in the State of Pennsylvania, and others located in the various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in table pads between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale of table pads between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in the sale and offering for sale of certain table pads manufactured by it, represents, and for more than one year last past has represented, through circulars distributed among the retail trade, that the pad it offers for sale and sells has "a soft back covering that will not harm the polished surface of a table. Can be had in a felted or genuine felt back, depending on the quality of the pad." Respondent also furnishes its customers located in different States of the United States and in the District of Columbia with samples of its said table pads for display, which samples are displayed by said customers in soliciting orders for, and in the sale of, said pads to the purchasing public. Stickers or labels affixed to said display samples and also to the pads sold to the ultimate purchasers carry, in part, the following phraseology:

MONOPAD

WASHABLE LEATHERETTE TOP

(Guaranteed to be a Pyroxilyn Coated Fabric)

FELTED BACK

(Choice of Meadow Green or Furniture Brown)

In truth and in fact, the padding or back covering of said table pads is not composed of or made of felt as the term "felt" is understood, used, and accepted by the retail trade and the purchasing public,

but the said padding is or back covering is composed of or made of a material or materials other than felt.

PAR. 3. Genuine felt is a fabric made by interlocking or matting together wool, hair, or fur, or a mixture thereof, by the action of heat, moisture, and pressure, without weaving, and often with the aid of glue. The term "felted" is applied to woven fabrics which have been subjected to a napping and felting process to make a more closely knitted material which has somewhat the appearance of genuine felt. To the purchasing public and to many wholesale and retail buyers the terms "felt" and "felted", when applied to fabrics, are synonymous.

It is generally understood and commonly believed among wholesalers, retailers, and the purchasing public that genuine felt table pads are the best pads obtainable and due to such belief and understanding there is a widespread public demand for and general use of genuine felt pads.

PAR. 4. The use by the respondent of the representations set out in paragraph 2 hereof, has had and does have the capacity and tendency to mislead and deceive, and does mislead and deceive wholesalers, retailers, and the purchasing public into the belief that said table pads are made of felt, and to purchase substantial quantities of said pads from respondent in such erroneous belief. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby "felted" table pads are passed off to the purchasing public as genuine felt pads. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of genuine felt table pads who do not misrepresent the material or materials contained in their table pads or the process by which their pads are manufactured, who likewise advertise, sell, and distribute table pads among the various States of the United States, and in the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors; thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce as herein 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..

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to define its powers and duties, and for other purposes," the Federal Trade Commission, on February 28, 1936, issued and served its complaint in this proceeding upon respondent, Garten Table Pad Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by M. S. Garber, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, respondent having declined to file brief or apply for oral argument; and the Commission having duly considered the same, and being now 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, Garten Table Pad Company, is a corporation organized in April 1932, and doing business under the laws of the State of Pennsylvania, having its principal office and place of business at 131 Market Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is, and has been at all times since the said date of its incorporation, engaged in the manufacture and sale of table pads to retail stores located in the District of Columbia and in about thirty States of the United States of America, for resale to the purchasing and consuming public. It has caused, and still causes, its said table pads, when so sold, to be transported in commerce from its place of business in the city of Philadelphia, State of Pennsylvania, into and through certain other States of the United States and into the District of Columbia, to the said purchasers thereof.

PAR. 3. At all times since April 1932, the respondent has been in direct and substantial competition in interstate commerce with other corporations, individuals, and partnerships engaged in the manufacture and sale of table pads as aforesaid.

PAR. 4. Table pads are used to protect the table surface from hot dishes, and in constructing pads for that purpose it is necessary that

said pads have a certain amount of insulation value. Insulation is usually accomplished by building up certain thickness of cardboard, alone or in combination with material known as deadening felt. These materials are then covered on both sides; the top by waterproof washable fabric, and the bottom or back with a soft fabric that will not damage the surface of the table.

Respondent manufactures and sells two types of table pads. The construction and materials used in both types are substantially the same with one exception. The exception is in the materials used as the bottom covering or back of the pads. In one type of pad the bottom covering or back is felt, a material produced from wool fibres, or wool and cotton materials, which have been matted together in layers, compressed, and shrunk. In the other type, the bottom covering or back is a cotton goods material or sheeting that is converted by several processes into a soft fabric, known variously as duvetyn, velourette, or velveteen, which is inferior in quality to felt. Felt is distinguished from other materials, and especially the materials used by respondent in its pads labeled "felted back", not only by the materials used in its manufacture but also by the distinctive process of manufacture. The pad with the felt back sells for \$3.98 to \$4.98, retail. The price of the pad backed with the materials other than felt ranges from \$2.98 to \$3.98, retail. The two types of pads are almost identical in size, shape, and general appearance. The only material difference is in the type and quality of the backing.

PAR. 5. Respondent contacts retail stores, through which it markets its pads, in two ways. One method is by mail, enclosing a description of its pads, price lists, and an inducement to buy respondent's pads. This inducement usually takes the form of an offer to cooperate in advertising costs. The other plan is to have the salesmen call on retail stores and submit the plan and samples.

Sample pads, miniatures of the pads sold, are exhibited on the counters and display stands in the retail stores. Orders for the table pads, based upon the samples so exhibited, are taken by the retailer and forwarded to the respondent manufacturer, who fills the orders from its factory. Respondent sold over \$50,000 worth of pads in 1935, and its business has increased annually since its beginning.

Until September 1935, the miniature pads, or samples, exhibited in the retail stores, and from which orders were taken, bore gum-back labels. The sample pad with the genuine felt back bore a label about three by eight inches in size on which appeared the following:

MONOPAD
WASHABLE LEATHERETTE TOP
GENUINE FELT BACK

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The sample pad with the cotton goods back bore a label about three by eight inches in size on which appeared the following:

MONOPAD
WASHABLE LEATHERETTE TOP
FELTED BACK

To experts, buyers, and members of the purchasing and consuming public, the terms "felt" and "felted" are synonymous. To buyers and the average purchaser-consumer a table pad labeled "felted back" means a table pad with a genuine felt back.

PAR. 6. The representations of respondent, as aforesaid, have had, and do have, the capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said table pads labeled "felted back" are backed with genuine felt, and have caused, and do cause, said purchasing public to purchase substantial quantities of respondent's pads in such erroneous belief.

PAR. 7. There are, among competitors of respondent, corporations and individuals who likewise manufacture and sell table pads among the various States of the United States and in the District of Columbia, who do not in any way misrepresent the material or materials from which their table pads are made. Respondent's acts and practices, as hereinabove set forth, tend to, and do, unfairly divert trade to respondent from such competitors, to the substantial injury and prejudice of said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Garten Table Pad Company, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein in support of the complaint, respondent having declined to file brief or apply for oral argument, 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

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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, Garten Table Pad Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of table pads in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, through the use of labels or otherwise:

That said table pads are backed with felt when said pads are not backed with felt, a material produced from wool fibres, or wool and cotton materials, which have been matted together, compressed and shrunk.

It is further ordered, That the 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
MORRIS GOTTSEGEN AND DAVID JACOBY, DOING BUSINESS AS MILLS SALES COMPANY

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

Docket 2864. Complaint, June 30, 1936—Decision, Sept. 25, 1936

Where a firm engaged as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, shaving creams, offered in pretended "giant" sizes, razor blade hones, and other toilet articles—

- (a) Described many articles and items of merchandise listed in their catalogs and price lists as possessing retail values many times in excess of the actual selling price to the retailer or other purchaser and many times in excess of the actual value thereof, and stamped or printed on various items and articles offered, or on labels attached thereto, or on containers thereof, retail prices many times in excess of actual price thereof as sold by peddler or retailers to consuming public, and many times in excess of their true and actual value, through such practice as designating as "Honor" brand "Dental Creams, Large Sizes Marked 35¢", creams with said price printed on cartons thereof, but offered at 60¢ per dozen or \$6.50 per gross, "Brushless" brand "Shaving Cream—Giant 50¢, 60¢, and 75¢ Sizes", creams with 60¢ printed as price on cartons, but offered at 72¢ a dozen or \$8.25 per gross, and razor blade hones "Marked to sell at \$1.00", while offered at 45¢ per dozen or \$5.00 per gross, and in their catalogs set forth many other instances showing the "spread" between the dozen or gross rate at which the commodities were offered and sold, and the fictitious retail prices marked thereon, which various prices were not those at which different items were expected to be sold, but were greatly in excess of those at which same were intended to be and were sold in usual course of trade;
- (b) Caused word "Manufacturers" to appear on letterheads and advertising matter used by them in soliciting sale of and selling their aforesaid products, notwithstanding fact they were not manufacturers and did not own, operate, or control any factory in which products sold and distributed by them in interstate commerce were made;
- (c) Used abbreviation "Dr." in connection with various commodities offered by them, through such statements as "Dr. Jay's High Quality Tooth Brushes," with depiction of brush and name "Dr. Jay" on handle thereof, and thus associated said name with their "Rubbing Alcohol," and with certain dental creams, in connection with which name "Dr. Sach's" was also set forth, notwithstanding facts products thus marked, stamped, branded, advertised, and sold were not made in accordance with design or under supervision of a doctor and did not contain special or scientific features as a result of medical advice or services;

With result of placing in hands of peddlers and retailers buying for resale an instrument and means enabling them to commit a fraud upon a substantial portion of the consuming public, through representing and offering said tooth

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brushes and other articles as genuinely superior products produced by manufacturers, with intent of selling same in usual course of trade to general consuming public at and for retail price stamped thereon or on containers thereof, in accordance with long standing and well understood custom by which quality is associated with suggested retail price stamped on product involved, and with intent and effect of misleading a substantial portion of the consuming public into belief that said various items were superior products sold and distributed by said individuals with intent that they should be sold at retail at a price closely proximating that stamped thereon, and that they were composed of superior ingredients and ordinarily sold in usual course of trade at such approximate prices, and that said individuals were manufacturers and large scale operators and distributors and conducted their business on such a scale as to assure purchasers of superior quality and closer prices through trading with them, and that products were made in accordance with design and under supervision of a doctor and contained special or scientific features as result of medical advice or services, and that products at prices at which actually offered represented bargains not ordinarily obtainable; and

With tendency and capacity to mislead and deceive distributors and purchasing public into erroneous belief that said statements and representations were true and with effect of inducing members of public to buy said products on account of such erroneous beliefs, and with result, by reason of such false and misleading statements and representations and added inducements therein for substantial number of retail merchants, as well as consumer purchasers, to buy such products, of diverting a substantial volume of trade from competitors, including those who, as manufacturers and distributors, truthfully advertise and represent the nature, merit, and value of their respective products, and those who do not advertise or represent their merchandise as stamped or marked with price marks greatly exceeding their actual intended retail sale value or retail sale price, or represent same as made in accordance with design or under supervision of a doctor, etc., as above set forth; to the consequent damage and injury of manufacturers and distributors and injury of general public, and to the substantial injury of competition in interstate commerce:

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

Mr. Joseph C. Fehr 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 Morris Gottsegen and David Jacoby, copartners trading as Mills Sales Company, hereinafter referred to as 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

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it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Morris Gottsegen and David Jacoby, are copartners trading as Mills Sales Company, having their principal office and place of business located at 901 Broadway, in the city of New York, State of New York, with a branch office also located in the city of New York and another branch office located in the city of Chicago, State of Illinois. Respondents have been for more than one year last past engaged in business as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blade hones, and other toilet articles. In the course and conduct of their business, respondents offer said products for sale and sell the same in commerce between the State of New York and the several States of the United States and in the District of Columbia.

When said products are sold, respondents transport or cause the same to be transported from their principal place of business in the State of New York or one of their aforesaid branch offices, to purchasers thereof located in States of the United States other than the State from which shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so manufactured and sold by respondents, between and among the various States of the United States and in the District of Columbia. Respondents are now and for more than one year last past have been engaged in substantial competition with other partnerships, and with individuals, firms, and corporations engaged in the manufacture of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents, in soliciting the sale of and in selling their commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, now cause and for more than one year last past have caused their commodities to be advertised through the medium of catalogs, price lists and other printed matter published, issued, and circulated through the United States mails, to their customers and prospective customers in the various States of the United States and in the District of Columbia. In said ways and by said means, respondents make and have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogs and price lists are

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described as possessing retail values many times in excess of the actual selling price by the respondents to the retailer, or other purchaser, and many times in excess of the actual value thereof. A number of the said items and articles of merchandise, described in said catalog, have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public. The retail prices, so stamped or printed as aforesaid, are many times in excess of the actual selling price of the said items or articles of merchandise by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid, are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

A portion of such statements and representations made by the respondents regarding the selling prices and value of the commodities thus offered by them for sale are as follows:

"Honor" brand "Dental Creams, Large Sizes Marked 35¢," offered at 60¢ per dozen, or \$6.50 per gross; the price of 35¢ was printed on the cartons in which packed;

"Seven Star" brand "Dental Creams—Giant 50¢ and 60¢ Sizes," offered at 72¢ per dozen or \$8.50 per gross; the prices of 50¢ and 60¢ were printed on the carton in which packed;

"Brushless" brand "Shaving Cream—Giant 50¢, 60¢, and 75¢ Sizes," offered at 72¢ per dozen or \$8.25 per gross, and the price of 60¢ was printed on the cartons;

A razor blade hone, "Marked to sell at \$1.00," offered at 45¢ per dozen or \$5.00 per gross.

The said catalogs contain many other instances showing the "spread" between the dozen or gross rate at which said commodities were offered for sale and sold and the fictitious retail prices marked thereon.

The prices placed upon said labels and appearing in said catalog as the value of said products were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

The statement and representation in such catalogs that their "Brushless" brand of shaving cream was put up in "Giant Sizes" was and is inaccurate and misleading; in fact said shaving cream is not put up in packages of sizes known to the trade and the purchasing public as "Giant" sizes.

Said respondents further cause and have caused the word "Manufacturers" to appear on their letterheads and advertising matter used in soliciting the sale of and selling their products in interstate com-

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merce; when in truth and in fact, said copartners were not and are not manufacturers, and do not and did not own, operate, or control any factory wherein the products sold and distributed by them in interstate commerce, or any of them, were made or fabricated.

Among other statements and representations made by the respondents regarding the prices and value of the commodities offered by them for sale are the following:

"Dr. Jay's High Quality Tooth Brushes", accompanied by a pictorial representation of a brush, showing the name "Dr. Jay", on the handle;

"Rubbing Alcohol", accompanied by a pictorial representation of a bottle of said product, showing the words "Dr. Jay's" on the label;

"Dental Creams" * * * Dr. Sach's; and

"Dental Creams"—Dr. Jay's; accompanied by a pictorial representation of the latter product, showing the words "Dr. Jay's Milk of Magnesia Dental Cream" on the carton and on the tube in which said product was packed.

The products so marked, stamped, branded, advertised, and sold in interstate commerce were not and are not made in accordance with the design and/or under the supervision of a doctor, as represented, and did not nor do they contain special or scientific features which were or are the result of medical advice or services.

PAR. 3. The retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, are not and were not intended by either the respondents or the purchaser purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices, as indicated, appearing on the items of merchandise or on the containers thereof, were intended by the respondents and by the purchaser purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 4. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein

detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for dental creams, shaving creams, toilet articles, and similar household novelties that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

Also, a substantial portion of the purchasing public has a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 5. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out, on the part of the respondents, places in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent and offer for sale, and sell, the said tooth brushes, shaving cream, dental cream, and other toilet articles, more fully described in paragraph 2, as genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for a retail price stamped on the products or on their containers.

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There are among the competitors of the respondents in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products. There are also among the competitors of respondents, manufacturers and distributors of like and similar products who do not advertise or represent through their catalogs and other advertising media that the merchandise offered for sale by them is stamped or marked with price marks greatly exceeding the actual intended retail sale value or retail sale price of the merchandise offered for sale, and who do not advertise or represent through their catalogs that their merchandise was made in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise as described in paragraph 2, is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

(1) That the various items of merchandise described in respondents' catalogs, as set forth in paragraph 2 hereof, were and are superior products sold and distributed by respondents with the intent and purpose that said products would be sold at retail at a price closely approximating the price stamped thereon;

(2) That said products, because of the price marks affixed or stamped thereon, are products composed of superior ingredients and are products that ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on said merchandise;

(3) That the respondents are manufacturers of said products and large scale operators and distributors and conduct their business on such a scale as to assure purchasers of superior quality and closer prices by trading with such operators;

(4) That such products are made, sold, and distributed in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

The foregoing false and misleading statements and representations on the part of respondents are added inducements for a substantial number of retail merchants, as well as consumer purchasers, to buy the products distributed and offered for sale by respondents, and have a tendency and capacity to, and do divert a substantial volume of trade from competitors of respondents engaged in similar busi-

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nesses, with the result that substantial quantities of said products as described in paragraph 2 hereof are sold to said retailers and to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof, substantial injury has been and is being done by respondents to competition in interstate commerce.

PAR. 7. Said acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 30th day of June 1936, issued and served its complaint in this proceeding upon Morris Gottsegen and David Jacoby, copartners, trading as Mills Sales Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondents herein filed separate answers thereto, in which answers the respondents stated that they waived hearing on the charges set forth in the complaint, that they admitted all of the material allegations of the complaint to be true and that they consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon them its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter this proceeding regularly came on for final hearing, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Morris Gottsegen and David Jacoby, have been for more than one year last past, copartners trading as Mills Sales Company with their principal place of business located at 901 Broadway in the city of New York, State of New York. They

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also operated a branch office in New York City and another branch office located in the city of Chicago, State of Illinois. On or about February 19, 1936, the said respondents terminated and dissolved their partnership since which time the management and operation of said Mills Sales Company has been carried on under the direction of the respondent, David Jacoby, at the same place of business located at 901 Broadway, in the city of New York, State of New York.

Respondents have been for more than one year last past engaged in business as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blade hones, and other toilet articles. In the course and conduct of their business, respondents have offered said products for sale in commerce between the State of New York and the various other States of the United States, and in the District of Columbia.

In the sale of said products respondents have transported or caused the same to be transported from their principal place of business in the State of New York or one of their aforesaid branch offices, to the purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so distributed and sold by respondents, between and among the various States of the United States, and in the District of Columbia. For more than one year last past respondents have been engaged in substantial competition with other partnerships and with individuals, firms, and corporations engaged in the manufacture and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents, in soliciting the sale of and in selling their commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, have for more than one year last past caused their commodities to be advertised through the medium of catalogs, price lists, and other printed matter published, issued, and circulated through the United States mails, to their customers and prospective customers in the various States of the United States, and in the District of Columbia. In said ways and by said means, respondents have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogs and price lists have been described as possessing retail values many times in excess of the actual selling price by

the respondents to the retailer, or other purchaser, and many times in excess of the actual value thereof. A number of the said items and articles of merchandise, described in said catalogs, have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they have been offered for sale and sold to the public. The retail prices, so stamped or printed as aforesaid, are many times in excess of the actual selling price of the said items or articles of merchandise sold by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

A portion of such statements and representations made by the respondents regarding the selling prices and value of the commodities thus offered by them for sale and which the respondent, David Jacoby, has continued to make since the dissolution of the partnership, as aforesaid, and which he now makes, are as follows:

"Honor" brand "Dental Creams, Large Sizes Marked 35¢", offered at 60¢ per dozen, or \$6.50 per gross; the price of 35¢ was printed on the cartons in which packed;

"Seven Star" brand "Dental Creams—Giant 50¢ and 60¢ Sizes", offered at 72¢ per dozen or \$8.50 per gross, the prices of 50¢ and 60¢ were printed on the carton in which packed;

"Brushless" brand "Shaving Cream—Giant 50¢, 60¢ and 75¢ Sizes", offered at 72¢ per dozen or \$8.25 per gross, and the price of 60¢ was printed on the carton;

A razor blade hone, "Marked to sell at \$1.00", offered at 45¢ per dozen or \$5.00 per gross.

The said catalogs contain many other instances showing the "spread" between the dozen or gross rate at which said commodities were offered for sale and sold and the fictitious retail prices marked thereon.

The prices placed upon said labels and appearing in said catalogs as the value of said products were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

The statement and representation in such catalogs that their "Brushless" brand of shaving cream was put up in "Giant Sizes" was and is inaccurate and misleading; in fact, said shaving cream is not put up in packages of sizes known to the trade and the purchasing public as "Giant" sizes.

Said respondents further have caused the word "Manufacturers" to appear on the letterheads and advertising matter used in soliciting

the sale of and selling the aforesaid products in interstate commerce; when in truth and in fact, said respondents, Morris Gottsegen and David Jacoby, were not and are not manufacturers, and do not and did not own, operate, or control any factory wherein the products sold and distributed by them in interstate commerce, or any of them, were made or fabricated.

Among other statements and representations made by the respondents regarding the prices and value of the commodities offered by them for sale are the following:

"Dr. Jay's High Quality Tooth Brushes", accompanied by a pictorial representation of a brush, showing the name "Dr. Jay" on the handle;

"Rubbing Alcohol", accompanied by a pictorial representation of a bottle of said product, showing the words "Dr. Jay's" on the label;

"Dental Creams" * * * Dr. Sach's; and

"Dental Creams"—Dr. Jay's; accompanied by a pictorial representation of the latter product, showing the words "Dr. Jay's Milk of Magnesia Dental Cream" on the carton and on the tube in which said product was packed.

The products so marked, stamped, branded, advertised, and sold in interstate commerce were not and are not made in accordance with the design and/or under the supervision of a doctor, as represented, and did not nor do they contain special or scientific features which were or are the result of medical advice or services.

PAR. 3. The retail prices which, as indicated above, appear on the items of merchandise or on the containers thereof, are not and were not intended by either the respondents or the purchaser purchasing for resale to be the true retail price or the true retail value of the merchandise so price marked. The retail prices thus appearing on the items of merchandise or on the containers thereof, were intended by the respondents and by the purchaser purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 4. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item

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is manufactured. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for dental creams, shaving creams, toilet articles, and similar household novelties that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 5. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out, on the part of the respondents, places in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent and offer for sale, and sell, the said tooth brushes, shaving cream, dental cream, and other toilet articles, more fully described in paragraph 2, as genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for a retail price stamped on the products or on their containers.

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There are among the competitors of the respondents in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products. There are also among the competitors of respondents, manufacturers and distributors of like and similar products who do not advertise or represent through their catalogs and other advertising media that the merchandise offered for sale by them is stamped or marked with price marks greatly exceeding the actual intended retail sale value or retail sale price of the merchandise offered for sale, and who do not advertise or represent through their catalogs that their merchandise was made in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise as described in paragraph 2, is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

(1) That the various items of merchandise described in respondents' catalogs, as set forth in paragraph 2 hereof, were and are superior products sold and distributed by respondents with the intent and purpose that said products would be sold at retail at a price closely approximating the price stamped thereon;

(2) That said products, because of the price marks affixed or stamped thereon, are products composed of superior ingredients and are products that ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on said merchandise;

(3) That the respondents are manufacturers of said products and large scale operators and distributors and conduct their business on such a scale as to assure purchasers of superior quality and closer prices by trading with such operators;

(4) That such products are made, sold, and distributed in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

The foregoing false and misleading statements and representations on the part of respondents are added inducements for a substantial number of retail merchants, as well as consumer purchasers, to buy the products distributed and offered for sale by respondents, and have a tendency and capacity to, and do divert a substantial volume of trade from competitors of respondents engaged in similar businesses, with the result that substantial quantities of said products

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as described in paragraph 2 hereof are sold to said retailers and to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof, substantial injury has been and is being done by respondents to competition in interstate commerce.

PAR. 7. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2, 3, and 4 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase the products of the said respondents on account of such erroneous belief, to the consequent damage and injury of manufacturers and distributors and to the injury of the general public, and said representations have unfairly diverted trade to said respondents from competitors and thereby substantial injury has been done by respondents to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, Morris Gottsegen and David Jacoby, formerly copartners trading as Mills Sales Company, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the separate answers of the respondents dated September 8, 1936, in which answers respondents admit all of the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of the law charged in the complaint; and the Commission having made its findings as to the facts and conclusion that said 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."

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It is ordered, That the time within which answers may be filed by said respondents be, and the same hereby is, extended from August 22, 1936, to this date, and that the separate answers of the respondents, Morris Gottsegen and David Jacoby, formerly trading as Mills Sales Company, be, and the same hereby are, received and filed.

It is further ordered, That the respondents, Morris Gottsegen and David Jacoby, formerly copartners trading as Mills Sales Company, individually, jointly or separately, or through or by means of any copartnership, firm, or corporation, and their associates, agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution of general merchandise and peddlers' supplies, including tooth brushes, shaving cream, rubbing alcohol, razor blade hones, and other toilet articles and household novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from—

Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter, or by radio broadcasting, or in any other manner—

(1) That the price marks affixed to or stamped on the products sold by them are the regular or customary resale prices for such products when said price marks are fictitious and greatly in excess of the regular and customary prices at which said products are sold or offered for sale at retail;

(2) That the products sold by them are designed by or are compounded under the supervision of a doctor or one possessing special knowledge of dental hygiene and pharmacology;

(3) That respondents or either of them are manufacturers of said products and are large-scale operators in and distributors of said products, or that they conduct their business on such a large scale as to assure purchasers of said products that they will receive products of superior quality and at lower prices by trading with respondents; and

(4) That the fictitious and excessive prices at which such or similar products are offered for sale or sold or intended to be sold by respondents are the regular retail prices customarily received for said products.

And it is further ordered, That the said respondents shall, within 60 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.

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IN THE MATTER OF

ATLANTIC COAST OIL COMPANY OF NEW YORK, INC.

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

Docket 2865. Complaint, June 30, 1936—Decision, Sept. 25, 1936

Where an association, in continuous operation for years and composed of practically all the refiners of motor oil produced from the Pennsylvania strata of oil fields, and of a large number of jobbers and distributors of such motor oil, organized to promote sale thereof, had caused large sums of money to be spent for such purpose and adopted emblem distinctive in arrangement, shape, color, and wording, and featuring words "Guaranteed 100 Per Cent Pure Pennsylvania Oil", for use by members on their labels and advertising to signify that distributor was an association member and that oil sold under emblem was pure, unadulterated oil, produced from said strata, so that, as result of such adoption and association activities, said emblem and name "Pennsylvania", together with derivations thereof, had acquired a very definite and valuable secondary meaning to purchasing public in connection with sale of motor oil as indicating and suggesting a pure, unadulterated oil produced from said Pennsylvania strata, such as decidedly preferred by substantial portion of consuming public; and thereafter a corporation engaged in business of blending and wholesaling motor oils and greases in competition with others similarly engaged—

(a) Caused its products to be offered for sale and sold in cans or containers bearing aforesaid emblem, together with phrase "Guaranteed 100 Per Cent Pure Pennsylvania Oil Specially Processed", and either word "Pennsylvania" or some derivation thereof and phrase "Permit No. —", so as to indicate that said oil was pure, unadulterated Pennsylvania oil and that it was a member of said association, notwithstanding fact that oil in question was not such a product, but was composed of a blend of oils produced from other territories, and it was not a member of association in question, nor entitled to use emblem thereof or word "License" or "Permit" therewith, or word "Pennsylvania" or any derivation thereof in connection with offer and sale of its products; and

Where the Society of Automotive Engineers had developed a system of numbers to indicate viscosities of motor oils and said system of letters and numbers, through long usage, had come to have a very valuable and secondary meaning when used in connection with sale of such products, for which, as thus correctly described, there was a very definite preference on the part of a substantial portion of consuming public; and thereafter aforesaid corporation—

(b) Caused to appear on cans and containers in which its products were packaged and sold, lettering and numbers used by said society in system thus developed by it to indicate relative viscosities, notwithstanding fact oil thus offered and sold by it under said letters and numbers did not have viscosity thus indicated;

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With capacity and tendency to confuse, mislead, and deceive trade and public through use of said emblem, etc., and said lettering and numbers, etc., and with result of inducing their purchase of said corporation's products in the belief that they were buying a pure and unadulterated oil or grease produced from the Pennsylvania strata, etc., and oils of the true viscosity indicated by such letters and numbers, etc., and with result of thereby placing in the hands of its jobbers, distributors, and retailer purchasers means of deceiving ultimate consumer, and of unfairly diverting trade from its competitors to it and to dealers in its said products; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Robert Stillman, 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 Atlantic Coast Oil Company of New York, Inc., 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. Atlantic Coast Oil Company of New York, Inc., is a corporation existing by virtue of the laws of the State of New York, with its principal place of business located at Dry Harbor Road and Cooper Avenue, Glendale, Queens, New York City. For several years last past the respondent has been engaged in the business of blending and wholesaling motor oils and greases, in commerce between and among the various States of the United States, causing the said products, when sold, to be shipped or transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York. In the course and conduct of its business, the respondent has been and is in substantial competition with other partnerships, corporations, firms, and individuals likewise engaged in the business of wholesaling motor oils and greases in commerce as hereinabove described.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit corporation organized in 1923, and has been in continuous

operation since that time. Its membership is composed of practically all of the refiners of motor oil produced in the Pennsylvania strata of oil fields and a large number of jobbers and distributors thereof. Its purpose has been and is to promote the sale of oil produced in the Pennsylvania strata of oil fields, and large sums of money have been spent to this end. The Association adopted an emblem to be used by each member on their labels and advertising matter, which signifies that such distributor is a member of the Association, and that oil sold under said emblem is a pure, unadulterated oil produced in the Pennsylvania strata of oil fields, and a bond is given by each member to assure these conditions to be true. The emblem is quite distinct in arrangement of shape, coloring, and wording, the featured wording being "Guaranteed 100% Pure Pennsylvania Oil". As the result of the activity of the Association the emblem described supra, as well as the name "Pennsylvania" together with derivations thereof, have acquired a very definite and valuable secondary meaning to the purchasing public when used in connection with the sale of motor oils; they indicate and suggest a pure, unadulterated oil produced in the Pennsylvania strata of oil fields for which a substantial portion of the consuming public have a very decided preference.

PAR. 3. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosities in motor oils, and through long usage this system of letters and numbers has come to have a very definite and valuable secondary meaning when used in connection with the sale of motor oils. The lower numbers used in the system developed by this Society indicate lighter oils to be used in low temperature, while the higher numbers indicate heavier oils to be used in higher temperature or fast driving, and there is a very definite preference on the part of a substantial portion of the consuming public for oils of the true viscosity indicated by said numbers.

PAR. 4. In the course of sale of its motor oils and greases the respondent causes its products to be offered for sale and sold, in commerce as described supra, in cans bearing the emblem of the Pennsylvania Grade Crude Oil Association, the phrase "Guaranteed 100% Pure Pennsylvania Oil, Specially Processed", the word "Pennsylvania" or some derivation thereof, the phrase "Permit No. —" together with said emblem, so as to indicate that the oil contained in said cans is a pure, unadulterated Pennsylvania oil or an oil produced in the Pennsylvania strata of oil fields, and also that the respondent is a member of the Pennsylvania Grade Crude Oil Association, when in truth and in fact the oil contained in the said containers is not a

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pure and unadulterated Pennsylvania oil but is one composed of a blend of oils produced in other territories, and when in truth and in fact the respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to use the emblem of said association, or the word "license" or "permit", together with said emblem, or the word "Pennsylvania" or any derivation thereof, in connection with the offering for sale and sale of its products.

In the course of offering for sale and sale of its products the respondent also causes to appear on cans and containers in which its products are packaged the lettering and numbers used by the Society of Automotive Engineers in the system which it has developed to indicate relative viscosities in motor oils, when in truth and in fact the oil offered for sale and sold by respondent under said letters and numbers does not have the viscosity indicated by the letters and numbers so used.

PAR. 5. The use by respondent of the emblem of the Pennsylvania Grade Crude Oil Association, the word "Pennsylvania" or any derivation thereof, the word "license" or "permit" together with said emblem, the lettering and numbers used by the Society of Automotive Engineers to indicate relative viscosities, in connection with the offering for sale and sale of its motor oils and products as aforesaid, has the capacity and tendency to confuse, deceive and mislead the trade and public, and is calculated to and does confuse, deceive, and mislead the trade and public, and as a result of said acts and practices the trade and public are induced to buy respondent's products in the beliefs that they are purchasing a pure and unadulterated motor oil or grease produced in the Pennsylvania strata of oil fields, and that they are purchasing oils of the true viscosity indicated by the letters and numbers on the containers in which respondent's oils are packaged. That through and by virtue of the aforesaid acts and practices the respondent has placed and is placing in the hands of its jobbers, distributors, and retailer purchasers the means of deceiving the ultimate consumer. In consequence of the aforesaid acts and practices trade is unfairly diverted from respondent's competitors and from dealers in the products of respondent's competitors to the respondents and dealers who sell respondent's products. Substantial injury is thereby done by respondent to substantial competition in commerce, as hereinabove set forth.

PAR. 6. The acts and things done by respondent, and the methods and practices employed, used and indulged in by it, as hereinabove alleged, described, and set forth, are all to the injury and prejudice of the public and to respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and

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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 June 30, 1936, issued and served its complaint in this proceeding upon respondent, Atlantic Coast Oil Company of New York, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 24, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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 Atlantic Coast Oil Company of New York, Inc., is a New York corporation with its principal place of business located at Dry Harbor Road and Cooper Avenue, Greendale, Queens, New York City. It has for several years last past been engaged in the business of blending and wholesaling motor oils and greases, in commerce between and among the various States of the United States. It causes its products when sold to be shipped or transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York. It has been and is in substantial competition with other partnerships, corporations, firms, and individuals likewise engaged in the business of wholesaling motor oils and greases in commerce between and among the various States of the United States.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit corporation organized in 1923, and has been in continuous

operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania strata of oil fields, and also a large number of jobbers and distributors thereof. It was organized to promote the sale of said oil and it has caused large sums of money to be spent to this end. The association adopted an emblem to be used by each member on their labels and advertising matter, which emblem signifies that such distributor is a member of the association, and that oil sold under the said emblem is a pure, unadulterated oil produced from the Pennsylvania strata of oil fields. A bond is given by each member to assure that said members will maintain the prescribed standard. The emblem is quite distinct in arrangement of shape, color, and wording, the featured wording being "Guaranteed 100 Per Cent Pure Pennsylvania Oil." Pursuant to the activities of the association, the emblem described *supra*, as well as the name "Pennsylvania", together with derivations thereof, has acquired a very definite and valuable secondary meaning to the purchasing public when used in connection with the sale of motor oil. They indicate and suggest a pure, unadulterated oil produced from the Pennsylvania strata of oil fields for which a substantial portion of the consuming public have a very decided preference.

PAR. 3. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosities in motor oils. Through long usage this system of letters and numbers has come to have a very definite and valuable secondary meaning when used in connection with the sale of motor oils. The lower numbers used in the system developed by this society indicate lighter oils to be used in low temperatures, while the higher numbers indicate heavier oils to be used in higher temperatures or fast driving. There is a very definite preference on the part of a substantial portion of the consuming public for oils of the true viscosity indicated by said numbers.

PAR. 4. The Atlantic Coast Oil Company of New York, Inc., caused its products to be offered for sale and sold in commerce, as described *supra*, in cans or containers bearing the emblem of the Pennsylvania Grade Crude Oil Association, the phrase "Guaranteed 100 Per Cent Pure Pennsylvania Oil Specially Processed", the word "Pennsylvania" or some derivation thereof, the phrase "Permit No. —" together with said emblem, so as to indicate that the oil contained in said cans or containers is a pure, unadulterated Pennsylvania oil, and also that respondent is a member of the Pennsylvania Grade Crude Oil Association. In truth and in fact the oil contained in the said containers is not such an oil as indicated, but is one composed of a blend of oils produced from other territories. In truth

and in fact the respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to use the emblem of said association, or the word "License" or "Permit", together with said emblem, or the word "Pennsylvania" or any derivation thereof, in connection with the offering for sale and sale of its products.

The Atlantic Coast Oil Company of New York, Inc., also causes to appear on cans and containers in which its products are packaged and sold the lettering and numbers used by the Society of Automotive Engineers in the system which it has developed to indicate relative viscosities in motor oils. In truth and in fact the oil offered for sale and sold by it under said letters and numbers does not have the viscosity indicated by the letters and numbers so used.

PAR. 5. The use of the emblem of the Pennsylvania Grade Crude Oil Association, the word "Pennsylvania" or any derivation thereof, the word "License" or "Permit" together with said emblem, the lettering and numbers used by the Society of Automotive Engineers to indicate relative viscosities, by the Atlantic Coast Oil Company of New York, Inc., in connection with the offering for sale and sale of its motor oils and products as aforesaid, is calculated to and has the capacity and tendency to confuse, deceive, and mislead the trade and public. As the result of said acts and practices the trade and public are induced to buy respondent's products in the belief that they are purchasing a pure and unadulterated oil or grease produced from the Pennsylvania strata of oil fields, and that they are purchasing oils of the true viscosity indicated by the letters and numbers on the containers in which respondent's oils are packaged. Through and by virtue of the aforesaid acts and practices the respondent has placed and is placing in the hands of its jobbers, distributors, and retailer purchasers the means of deceiving the ultimate consumer, and as the result trade is unfairly diverted from respondent's competitors, to the respondent and dealers who sell respondent's products. Substantial injury is thereby done by respondent to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, Atlantic Coast Oil Company of New York, Inc., a corporation, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Atlantic Coast Oil Company of New York, Inc., a corporation, its officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of its motor oils and greases in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing through the use of the emblem of the Pennsylvania Grade Crude Oil Association that it is a member of said association, unless and until such is the case.

(2) Representing through the use of the emblem of the Pennsylvania Grade Crude Oil Association, the phrase, "Guaranteed 100 Per Cent Pure Pennsylvania Oil, Specially Processed", the word "Pennsylvania" or any derivation thereof, the phrase "Permit No. —", or the word "License" together with said emblem, that the oil or greases being offered for sale or sold by it are pure, unadulterated Pennsylvania oils or greases produced in the Pennsylvania strata of oil fields, unless and until such is the case.

(3) Representing, through the use of the letters and numbers developed by the Society of Automotive Engineers to indicate relative viscosities in motor oils, that the products being offered for sale and sold have the viscosities indicated by said numbers and letters, when such is not the case.

It is further ordered, That the 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.

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IN THE MATTER OF
ACME DISTILLERIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2370. Complaint, Apr. 22, 1935—Decision, Sept. 29, 1936

Where a corporation engaged in rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages, and neither distilling such whiskies, etc., by process of original and continuous distillation through closed pipes and vessels until manufacture is complete, nor owning, operating, or controlling a place or places where such beverages are made by process of distillation, but purchasing its distilled spirits requirements from distillers, and selling its said rectified and bottled products among the various States, in competition with corporations, firms, etc., engaged in manufacture and distillation of whiskies, etc., and who truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names and on their stationery and on labels of bottles in which they sell and ship such products, and in competition with corporations, etc., engaged in rectifying, blending, and bottling whiskies, etc., and who do not use said words as a part of their said names, etc.—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and on labels attached to bottles in which it sold and shipped its said products, and in various other ways, that its said whiskies, brandies, rum, gin, and other spirituous beverages, thus contained and labeled, were by it made through process of distillation, and furnished its said customers with means of similarly misrepresenting said products as thus made to their own customer retailer vendees and to ultimate consuming public, as case might be;

With effect of misleading and deceiving dealers and purchasing public into belief that said whiskies, etc., sold by it were by it made and distilled, and with capacity and tendency so to do and to induce dealers and purchasing public, in such belief, to buy said whiskies, etc., thus rectified, blended, and bottled by it, and with effect of diverting trade thereby to it from competitors who did not, through their trade or corporate names, or in any other manner, misrepresent that they were manufacturers by distillation of whiskies, and other spirituous beverages; to the substantial injury of substantial competition in commerce:

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

Before *Mr. John W. Bennett*, trial examiner:

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., and *Mr. I. William Schimmel*, of Baltimore, Md., for respondent.

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.

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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 Acme Distilleries, 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 in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business in the city of Baltimore in said State. It is now and since its organization in 1934 has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it causes its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to

the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, a place or places where such liquors are manufactured by the process of distillation; and a substantial portion of the purchasing public prefer to buy spirituous liquors bottled by actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilleries" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, brandies, rum, and gin, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rum, gin, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages who do not use the words "distilleries," "distillery," "distilling," or "distillers" as a part of their corporate names nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rum, gin, and other spirituous beverages sold by the respondent are manufactured and distilled by it and induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rum, gin, and other spirituous beverages rectified, blended, and bottled by the respondent thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation of whiskies, brandies, gin, rum, and other spirituous bev-

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erages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business in the city of Baltimore in said State. It is now and since its organization in 1934 has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it causes its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia.

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

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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. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90) the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid Act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection

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therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations, and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of said code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. False Advertising.—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission, or inference it tends to create a misleading impression.

PAR. 7. The use by respondent of the word "distilleries" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged

in the business of distilling spirits, and that the spirituous beverages by it so sold and transported have been bottled at a distillery by the original distillers thereof, all contrary to the provisions of Section 1, Article V, of the code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

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 April 22, 1935, issued and served its complaint in this proceeding upon respondent, Acme Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (brief in opposition thereto and oral arguments of counsel aforesaid having been waived); and the Commission having duly considered the same, and being now 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 corporation was organized in 1934, and still exists under and by virtue of the laws of the State of Maryland,

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with its principal office and place of business at 723-725 West Pratt Street, in the city of Baltimore, in said State. From the time of its organization as aforesaid until about July 1, 1935, it was engaged under a basic permit, No. R-462, from the United States, in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business it caused its said products when sold by it to be transported from its place of business in the city of Baltimore aforesaid to the purchasers thereof consisting of wholesalers and retailers, some located in the State of Maryland and others located in various other States of the United States and in the District of Columbia. In the course and conduct of its business, respondent was, during said period of time, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent was likewise in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages and in the sale thereof between and among the various States of the United States and in the District of Columbia.

Later, respondent's business was placed in the hands of receivers by the Circuit Court of Baltimore City in involuntary receivership proceedings (*Central Wholesale Company, Inc. v. Acme Distilleries, Inc.*, Docket 1935-A, Folio 308), and late in November 1935, all of its assets were sold and disposed of by auction except that no sale was made of the name "Acme Distilleries, Inc." nor of the right to use the same, unless and insofar as such right may be incident to a sale made by said receivers to the Overbrook Company, another Baltimore rectifier of respondent's unused labels bearing its corporate name. At the time of the hearings it was not known by the receivers whether the respondent's corporate existence would or would not be dissolved.

PAR. 2. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: a place or places where such liquors are manufactured by the process of distillation. There is a

sharp distinction at present in the trade between the processes of distilling and of rectifying. Distilling is confined to the manufacture of alcoholic spirits by continuous process from grain mash to cistern room in the case of whiskies. Rectifying deals wholly with subsequent modification of the product, not involving the process of distillation, and a substantial portion of the purchasing public prefer to buy spirituous liquors bottled by actual distillers and manufacturers thereof, usually for the reason they feel that the goods put out directly by the manufacturer are likely to be more trustworthy and because they feel that the manufacturer has more at stake than any middleman.

PAR. 3. Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ——— Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by ——— Company." If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ——— Company." Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-462" designates this respondent. A distiller who also operates

a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products."

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchased its distilled spirits requirements from other distillers, rectified some and bottled some without rectification, and sold it in interstate commerce.

Like many other rectifiers, this respondent bottled certain brands of liquors for customers, placing the customer's label on the whiskies or liquors at the customer's request. These were known as "private brand labels," and did not contain its corporate name.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distilleries" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, brandies, rum, and gin, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent was not a distiller, did not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and did not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 5. There were and still are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rum, gin, and other spirituous beverages, sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There were and still are among such competitors, corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages who do not now and who did not during the period here involved, use the words

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"distilleries," "distillery," "distilling," or "distillers" as a part of their corporate names nor on their stationary nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by respondent as set forth in paragraph 3 hereof, was calculated to and had a capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rum, gin, and other spirituous beverages sold by the respondent were manufactured and distilled by it and had a tendency to induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rum, gin, and other spirituous beverages rectified, blended, and bottled by the respondent thereby diverting trade to respondent from its competitors who did not by their trade or corporate names or in any other manner misrepresent that they were manufacturers by distillation of whiskies, brandies, gin, rum, and other spirituous beverages, and thereby respondent did substantial injury to substantial competition in interstate commerce.

Nothing appears to show that respondent's corporate existence will not be continued or that in the future it might not, unless prohibited therefrom, again engage in the distilled spirits rectifying business, and in connection therewith resume the acts and practices above described.

CONCLUSION

The aforesaid acts and practices of the respondent, Acme Distilleries, Inc., were 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein in support of said complaint (brief in opposition thereto and oral arguments by counsel for the Commission and for the respondent having been waived), and the Commission having made its findings as to 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

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Trade Commission, to define its powers and duties, and for other purposes.”

It is ordered, That the respondent, Acme Distilleries, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of whiskies, brandies, rum, gin, and other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing through the use of the word “Distilleries” in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import from representing (a) that it is a distiller of whiskies, brandies, rum, gin, or other spirituous beverages; or (b) that the said whiskies, brandies, rum, gin, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such products are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such products are by it manufactured through a process of original and continuous distillation through closed pipes and vessels until the manufacture thereof is complete.

It is further ordered, That the said complaint be and the same is hereby dismissed as to count 2 thereof.

It is further ordered, That the respondent shall, within 30 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.

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IN THE MATTER OF

W. A. GIBBS & SON, INC.

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

Docket 2534. Complaint, Aug. 30, 1935—Decision, Sept. 30, 1936.

Where a corporation engaged in the manufacture and sale of animal traps, including its so-called "Two-Trigger" trap, developed by its president for purpose of attempting to eliminate or reduce to a minimum escapes, misses, losses, and "wring-offs" in trapping kind of animals for which adapted, and most generally used for trapping muskrats, and which had been highly successful in meeting the great difficulty encountered with use of single-jaw products in trapping such animals, from the considerable proportion of such escapes, etc., and certain tests of which indicated 100% perfect efficiency so far as wring-offs were concerned—

Represented, in catalogs, circulars, newspaper advertisements, and in other ways, that use of its said "Two-Trigger" trap assured a 100% catch, held every muskrat and prevented it from twisting and turning, and was escape-proof and eliminated wring-offs, through such statements as "Every Catch Stays Caught," "No Wring-Offs—No Losses," "Inner Trap Grips foot. Outer trap grips body," etc., "Finally the trap with 100% catch was perfected. It held every muskrat. It stopped the wring-offs," etc., "The Only 100% Muskrat Trap";

Facts being that trap, while highly successful, had not been 100% successful in preventing escapes, misses, losses, and wring-offs, and certain percentage of latter had occurred in practical use by trappers, as well as failures in other particulars, due to various factors and differences in conditions of use as contrasted with conditions prevailing under tests or series thereof;

With tendency and capacity to confuse, mislead, and deceive members of public in said particular and induce them to buy said traps because of such erroneous belief, and to divert trade to it from competitors, among whom there are those who do not make the same or similar misleading representations in regard to their said products, and with effect of so diverting business to it from such competitors, to their substantial injury and prejudice:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Kennard N. Ware, 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,

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to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. A. Gibbs & Son, Inc., a corporation, 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, W. A. Gibbs & Son, Inc., 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 located in the city of Chester in said State. It is now and for more than one year last past has been engaged in the manufacture of animal traps and in the sale thereof between and among the various States of the United States and the District of Columbia, and now causes and for more than one year last past has caused such animal traps when sold by it to be shipped from its place of business in Chester aforesaid to the purchasers thereof, some located in the State of Pennsylvania and others located in various other States of the United States and in the District of Columbia, and there is now and has been for more than one year last past a constant current of trade and commerce by the respondent in animal traps between and among the various States of the United States and the District of Columbia.

Respondent is now and for more than one year last past has been in substantial competition with other corporations, and with persons, firms, and partnerships engaged in the sale of animal traps between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, in selling and in soliciting the sale of animal traps manufactured by it, respondent now represents and for more than one year last past has represented in and by its catalogs, by circulars, newspaper advertisements, and in other ways that the use of a type of animal trap manufactured and sold by it and known as "Gibbs' Two-Trigger" assures a 100% catch, that it holds every muskrat, that it absolutely prevents a muskrat from twisting and turning, that it is escape proof, and that it eliminates wring-offs, and that it holds all of the animals trapped by it.

In truth and in fact the use of the said trap designated "Gibbs' Two-Trigger" does not assure a 100% catch; such trap does not hold every muskrat; the use of such trap does not prevent a muskrat from twisting and turning; it is not escape proof and does not pre-

vent or eliminate wring-offs; and it does not hold all of the animals trapped therein.

PAR. 3. The use by the respondent of the representations set out in paragraph 2 hereof has and has had the capacity and tendency to mislead and deceive and does and has mislead and deceived the purchasing public into the beliefs that such representations are true, and to purchase such traps from respondent in such erroneous beliefs. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers of animal traps who do not misrepresent the efficiency of the animal traps sold by them between and among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted by respondent from such competitors; thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 4. 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, on August 30, 1935, issued and served its complaint in this proceeding upon respondent, W. A. Gibbs & Son, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Kennard N. Ware, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, counsel for respondent having elected not to file a brief or to be heard in oral argument; and

the Commission having duly considered the same, and being now 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, W. A. Gibbs & Son, Inc., 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 located in the city of Chester in said State. During the course of said hearings, and for more than five years prior thereto, respondent was engaged in the manufacture of animal traps and in the sale thereof between and among the various States of the United States. In the conduct of said business, respondent caused its said animal traps to be shipped from its said place of business in Pennsylvania to purchasers thereof located in various other States of the United States. Respondent, in the sale of its said animal traps, as aforesaid, has been in substantial competition with other individuals, partnerships, and firms engaged in the sale of animal traps between and among the various States of the United States.

PAR. 2. One of the animal traps made and sold by respondent as aforesaid was one designated and described by it as the Gibbs "Two-Trigger" trap. Respondent, in its catalogues, circulars, newspaper advertisements, and in other ways, made representations during the time aforesaid in regard to said "Two-Trigger" trap to the effect that the use thereof assures a 100% catch, that it holds every muskrat, that it absolutely prevents a muskrat from twisting and turning, that it is escape proof, that it eliminates "wring-offs", and that it holds all of the animals trapped thereby. Examples of such representations are the following:

Every Catch Stays Caught.

No Wring-Offs—No Losses.

Inner Trap grips foot. Outer trap grips body. No movement from foot to the shoulder.

Escape-Proof.

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**DOUBLE JAW
Super-Grip
GNAW-PROOF.**

Finally the trap with 100% catch was perfected. It held every muskrat. It stopped the wring-offs. Every rat, whether caught in water or on dry land, stayed caught and with no injury to the fur. Mr. Gibbs called this new trap Two Trigger for it was in reality two traps in one, a small inner trap to grip the leg of the animal and a larger trap to close over the body—a combination of grips which absolutely prevented a rat from twisting and turning. * * *

Two Trigger—The Perfect Muskrat Trap.

It's the Patent

LEG AND BODY GRIP

That Makes This Trap Escape-Proof

No Wring-Offs No Pull-Outs No Get-Aways

The pan never wobbles and if the animal trips the trigger **THE CATCH IS SURE.**

Every Catch Stays Caught in the Escape-Proof Two-Trigger.

No Wring-Offs

No Pull-Outs

No Get-Aways.

No Losses.

Two-Trigger Traps Always Hold the Catch.

Rate Gibbs Two-Trigger as the cheapest trap you can possibly buy, for the reason you do not have any losses by wring-offs, pull-outs, or get-aways.

The Only 100% Muskrat Trap.

PAR. 3. The Gibbs "Two-Trigger" trap is one that was developed by W. A. Gibbs, president of the respondent company, for the purpose of attempting to eliminate, or to reduce to a minimum, escapes, misses, losses, and "wring-offs" in trapping the kind of animals for which it is adapted. It is most generally used in the trapping of muskrats. The great difficulty with the use of single jaw traps in trapping such animals is, and has been, the considerable proportion of escapes, misses, losses, and "wring-offs." The Gibbs "Two-Trigger" trap, in addition to having the primary jaws corresponding to those in the single jaw trap, has a pair of outer jaws which operate in conjunction with the primary jaws and which are intended to hold the body of the animal so as to prevent movement and escape. The trap has been highly successful in this particular, but it has not been 100% successful in preventing escapes, misses, losses, and "wring-offs." Respondent has conducted certain tests which indicated 100% efficiency, so far as "wring-offs" were concerned, but in practical use by trappers a certain percentage of "wring-offs" has occurred as well as failures in the other particulars enumerated above. So many factors are involved in the use and operation of a trap such as that made and sold by respondent, and conditions of use are so varied, that no two instances of trapping an animal therewith are, or can be, alike. The same may be said of any series of tests therewith. These varied factors and differences in conditions of use contribute to failure, in some instances at least, even though under ideal conditions performance may be 100% successful. It is doubtful whether any trap could be so contrived as to be 100% successful under all conditions and circumstances.

PAR. 4. Respondent's "Two-Trigger" trap does not assure a 100% catch, it does not hold every muskrat, it does not entirely prevent a muskrat from twisting and turning, it is not absolutely escape proof, and it does not entirely prevent or eliminate "wring-offs". Neither does it hold all of the animals trapped therein, or which spring the trap. The mere fact that said trap tends to eliminate such failures, or that it is 100% efficient in some cases, or in certain tests, does not give justification to representations of 100% efficiency.

PAR. 5. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid and to induce them to purchase respondent's said traps because of such erroneous beliefs en-

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gendered as above set forth and to divert trade to respondent from competitors engaged in the sale in interstate commerce of animal traps designed and intended for the same general use as those made and sold by respondent.

PAR. 6. There are among the said competitors of respondent in the sale of its said traps those who do not make the same or similar misleading representations as those made by respondent, as herein set out, in regard to the traps sold by them and respondent's said acts and practices have tended to and have in fact diverted business to respondent from its said competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, W. A. Gibbs & Son, Inc., 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, 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 respondent, testimony and other evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of complaint, brief on behalf of respondent and oral argument having been waived by counsel 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 the respondent, W. A. Gibbs & Son, Inc., its officers, representatives, agents, and employees, and its successors in interest, in connection with the offering for sale, sale and distribution of its animal traps known as Gibbs "Two-Trigger" traps in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

(1) That said traps are 100% efficient in operation or that they effect a 100% catch.

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(2) That they will entirely eliminate misses, escapes, "wring-offs" or losses.

(3) That every animal that springs the trap will "stay caught."

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

AMERICAN MINT CORPORATION ET AL.

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

Docket 2762. Complaint, Apr. 10, 1936—Decision, Oct. 2, 1936.

Where two individuals and a corporation engaged in manufacture and sale of candy, including a packaged assortment of penny pieces of uniform size, shape, and quality, a small number of which contained a sum of money so concealed that purchasers procured same wholly by lot or chance—

Sold such assortments to wholesalers, brokers, and retail chain stores, along with retailers' display cards explaining aforesaid sales plan and money prizes; contrary to public policy as long recognized in the common law and criminal statutes, and to that of the United States Government, and in competition with many who were unwilling to offer and sell candy so packed, assembled, or otherwise arranged for sale to the purchasing public as to involve a game of chance, and refrained therefrom;

With result of placing in hands of others means of conducting a lottery in sale of their products, to induce purchase thereof in preference to competitors', and with result that many dealers and ultimate purchasers were induced to buy the candy thus packed and sold, attracted by said method and manner of packing same and element of chance involved in sale thereof, in preference to that offered and sold by said competitors who do not use such methods, and with tendency and capacity thereby to divert to them trade and custom from said competitors who do not use such a method, to exclude from said candy trade all competitors who are unwilling to, and do not, use same or equivalent method because unlawful, and to tend to lessen competition in said trade and create a monopoly thereof in them and such other distributors as use same or equivalent method, deprive the purchasing public of the benefit of free competition therein, and eliminate from trade in question all actual competitors and exclude all potential competitors who do not adopt and use such or an equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Burnstine, Geist & Netter, 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 Ameri-

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can Mint Corporation, a corporation, and Mack R. Keshen and Oswald Freund, individually and as copartners, trading under the name of American Mint Corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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, American Mint Corporation, is a corporation organized on February 20, 1923, under the laws of New Jersey with its principal office and place of business located at 114 E. 13th St., New York City. Respondents, Mack R. Keshen and Oswald Freund are copartners doing business under the name and style of American Mint Corporation, with their principal office and place of business located at 114 E. 13th Street, New York City. Said individual respondents, and the corporate respondent, American Mint Corporation, since the date of its organization, are engaged in the manufacture of candies, and in the sale and distribution thereof to brokers, wholesalers, and retail chain stores located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in New York City, N. Y., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course of said business, respondents are in competition with other corporations, partnerships, and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesalers, brokers, and retail chain stores a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortment of candy is composed of a number of pieces of candy of a uniform size, shape, and quality, but a small number of said pieces of candy have contained within them a sum of money. The said sums of money contained within the said pieces of candy are effectually concealed from the consumer until after he has purchased the said piece of candy and broken it apart. The said pieces of candy in said assortment retail at the price of 1¢ each, but the purchasers who procure one of said pieces of candy having a sum

of money contained therein thus procure the said sum of money contained therein as a prize and wholly by lot or chance.

Respondents furnished to said wholesale dealers, brokers, and retail chain stores with said assortment of candy, display cards to be used by retailers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortment of candy is being sold in accordance with the sales plan above mentioned, and portraying the actual monetary character of the prizes.

PAR. 3. The wholesale dealers to whom respondents sell their assortment resell said assortment to retail dealers, and said retail dealers, and the chain store retail dealers to whom respondents sell direct, expose said assortment for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondents' said product in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a sum of money.

The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their 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 who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondents 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 the respondents has the tendency and capacity 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.

PAR. 6. Many of said competitors of respondents 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, 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.

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 April 10, 1936, issued and served its complaint in this proceeding upon the respondents, American Mint Corporation, a corporation, and Mack R. Keshen and Oswald Freund, individually and as copartners, trading under the name of American Mint Corporation, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. Respondents filed answer to said complaint on April 30, 1936, and thereafter, on July 9, 1936, the respondents moved to withdraw the answer theretofore filed on April 30, 1936,

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and offered for filing an amended answer, which motion was granted and the amended answer was received and filed. In the said amended answer respondents admit all the material allegations of the complaint to be true and consent that the Commission may, without further evidence and without other intervening procedure, make, enter, issue, and serve upon them its findings as to the facts and conclusion based thereon, and an order to cease and desist from the methods of competition alleged in the complaint. This proceeding thereafter having regularly come on for final hearing on the said complaint and on the said amended answer of respondents, dated July 9, 1936, the Commission, having duly 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, American Mint Corporation, is a corporation organized on February 20, 1923, under the laws of New Jersey, with its principal office and place of business located at 114 East 13th Street, New York City. Respondents, Mack R. Keshen and Oswald Freund, are copartners doing business under the name and style of American Mint Corporation, with their principal office and place of business located at 114 East 13th Street, New York City. Said individual respondents, and the corporate respondent, American Mint Corporation, since the date of its organization, are engaged in the manufacture of candies and in the sale and distribution thereof to brokers, wholesalers, and retail chain stores located at points in the various States of the United States, and cause said products, when so sold, to be transported from their principal place of business in New York City, N. Y., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course of said business, respondents are in competition with other corporations, partnerships, and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesalers, brokers, and retail chain stores a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

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Said assortment of candy is composed of a number of pieces of candy of a uniform size, shape, and quality, but a small number of said pieces of candy have contained within them a sum of money. The said sums of money contained within the said pieces of candy are effectively concealed from the consumer until after he has purchased the said piece of candy and broken it apart. The said pieces of candy in said assortment retail at the price of 1¢ each, but the purchasers who procure one of said pieces of candy having a sum of money contained therein thus procure the said sum of money contained therein as a prize and wholly by lot or chance.

Respondents furnish to said wholesale dealers, brokers, and retail chain stores, with said assortment of candy, display cards to be used by retailers in offering said candy for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortment of candy is being sold in accordance with the sales plan above mentioned, and portraying the actual monetary character of the prizes.

PAR. 3. The wholesale dealers, to whom respondents sell their assortment, resell said assortment to retail dealers, and said retail dealers, and the chain store retail dealers to whom respondents sell direct, expose said assortment for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondents' said product in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a sum of money.

The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their 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 who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondents 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 the respondents has the tendency and capacity 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.

PAR. 6. Many of said competitors of respondents 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 or any other method that is contrary to public policy.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued and served on April 10, 1936, and the amended answer of the respondents dated July 9, 1936, admitting all the material allegations of the complaint to be true and waiving all further proceedings herein, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondents, their agents, representatives, and employees, in the offering for sale, sale, and distribution by them in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, retail dealers and wholesale dealers and jobbers packages or assortments of candy which are used, or may be 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 candy or candy products contained in said assortments to the public;

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces or candy of uniform size and shape, some of which pieces of candy have concealed within them pieces of money;

(4) Furnishing to retail dealers and wholesale dealers and jobbers display cards, either with assortments of candy, or separately, bearing legends or statements informing the purchaser that some of the said pieces of candy contained in said assortment have pieces of money concealed within them.

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

Complaint.

IN THE MATTER OF

M. & J. BECKER, INC.

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

Docket 2923. Complaint, Sept. 17, 1936—Decision, Oct. 8, 1936

Where a corporation engaged in manufacture, distribution, and sale of hats and caps—

Sold to wholesalers and to retailers baseball caps made from second-hand, old, and discarded felts which had been cleaned and otherwise processed or treated and refitted with new sweat bands and trimmings, and which had appearance of new caps, of new felt, and never worn, and were susceptible of sale at retail under circumstances indicating such to be the fact, with no labels to indicate the true nature of such articles, cost of which to it was much less than new caps;

Notwithstanding fact of common belief and understanding among wholesalers and retailers and purchasing public that caps having appearance of new and unused products as those distributed and sold by it and others dealing in such articles, as aforesaid, with no labels indicating their nature, were in fact new, unused, and never-worn goods, and that such dealers and public, in purchasing such articles with appearance of new and unused goods and without labels as above set forth, were entitled to receive new and unused caps, and not those made from second-hand, old, used, and discarded felts, renovated and made over;

With capacity and tendency to induce a substantial number of wholesalers and retailers and of the purchasing public to buy its aforesaid caps as and for new and unused articles made from new felts, and with result that trade was unfairly diverted to it from competitors engaged in sale and distribution of caps made from new and unused felts, or those made from used, old, second-hand, and discarded felts, and who truthfully labeled the character and quality thereof; to the substantial injury of competition in commerce:

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

Mr. J. T. Welch for the Commission.

Mr. Perry Gottlieb, 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 M. & J. Becker, Inc., a corporation, hereinafter referred to as respondent, is:

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now and has been 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, M. & J. Becker, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 2961 Atlantic Avenue, Brooklyn, in the State of New York. Respondent is now, and has been for more than one year last past, engaged in the business of manufacturing hats and caps made from felt and from other materials and in the distribution and sale of said hats and caps so manufactured by it or manufactured by others, in commerce as herein set out. Among the caps distributed and sold by the respondent are certain baseball caps made from old, used, second-hand, and discarded felts.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said hats and caps, when sold, to be transported from its office and principal place of business in the State of New York to the purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been at all times since the organization of the respondent corporation, a constant current of trade in said products so distributed and sold by the respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling, or in the business of distributing and selling, hats and caps made of felt or other materials, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, as described herein, respondent has manufactured, distributed, and sold, or has purchased, distributed, and sold baseball caps which have been made from second-hand, used, old, and discarded felts which have been renovated by the respondent or by others. The second-hand, old, used, and discarded felts are first cleaned, then steamed, ironed, and shaped and refitted with new sweat bands and trimmings, either by the respondent or by others, and are then sold by the respondent to wholesalers who resell them to retailers, or to retailers direct, all of said retailers reselling said caps to the purchasing public.

PAR. 5. The aforesaid baseball caps made from old, used, discarded, and second-hand felts, after being made over and fitted with new trimmings by the respondent or by others, as distributed and sold by the respondent, have the appearance of new caps which have never been worn and said caps are distributed and sold by the respondent to wholesalers and retailers without any labels being attached to said caps to indicate that they are, in fact, second-hand caps which have been made over from old, used, and discarded felts. Said caps so sold by the respondent to wholesalers and retailers may be, by said purchasers, resold to members of the purchasing public without disclosing the fact that said caps have been previously worn and then renovated and made over in the manner herein set out, and said caps may be sold under such circumstances as to indicate that they are, in fact, new hats.

The cost to respondent of obtaining, renovating and making over said caps, or of purchasing said renovated and made over caps for resale is much less than the cost of new caps of similar quality made from new felt and respondent is thereby able to sell said caps to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new caps can sell caps of the same or similar quality to retail and wholesale dealers.

PAR. 6. It is a common belief and understanding among wholesale and retail dealers, and the purchasing public, that caps having the appearance of new and unused caps, as do caps distributed and sold by the respondent and by others dealing in said caps, which do not bear labels indicating that said caps are not new caps, are, in fact, caps which are new and unused and have never been worn or used by anyone previously. Said wholesale and retail dealers, and the purchasing public, when buying caps having the appearance of new and unused caps, said caps not having labels indicating that they are not new and unused caps, are entitled to receive new and unused caps and not caps made from second-hand, old, used, and discarded felts which have been renovated and made over.

PAR. 7. The acts and practices of the respondent, as hereinabove set out, are calculated to, and do, have the tendency and capacity of inducing a substantial number of wholesale and retail dealers, and a substantial number of the purchasing public, to purchase said caps made from second-hand, old, used, and discarded felts in the mistaken belief that they are purchasing new and unused caps made from new felt. As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale and distribution of caps made from new and unused felt or in the distribution and sale of caps made from used, old, second-hand, and discarded felts, who

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truthfully label the quality of said caps, in interstate commerce among and between the various States of the United States. As a result thereof, substantial injury is done by respondent to competition in interstate commerce.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent 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 17th day of September 1936, issued and served its complaint in this proceeding upon respondent, M. & J. Becker, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 26, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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, M. & J. Becker, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 2961 Atlantic Avenue, Brooklyn, N. Y. For more than one year last past, it has been engaged in the business of manufacturing hats and caps made from felt and from other materials. It is also engaged in the business of distributing and selling hats and caps manufactured by it as well as hats and caps

manufactured for it by others. Among the caps distributed and sold by the respondent are certain baseball caps made from old, used, second-hand, and discarded felts.

PAR. 2. The respondent causes the hats and caps distributed and sold by it, including those which it purchases from the manufacturer thereof, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in other States of the United States. It has, since its organization, maintained a constant current of trade in said hats and caps, including the baseball caps made from old, used, second-hand, and discarded felts, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling, or in the business of distributing and selling, hats and caps made of felt or other materials, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, respondent has manufactured, distributed, and sold, or has purchased, distributed, and sold, baseball caps which have been made from second-hand, used, old, and discarded felts which have been renovated by the respondent or by others. The second-hand, old, used, and discarded felts are first cleaned, then steamed, ironed, and shaped and refitted with new sweat bands and trimmings, either by the respondent or by others, and are then sold by the respondent to wholesalers who resell them to retailers, or to retailers direct, all of said retailers reselling said caps to the purchasing public.

PAR. 5. The baseball caps made from old, used, second-hand, and discarded felts, after being made over and fitted with new sweat bands and trimmings, have the appearance of new caps which have never been worn and have the appearance of caps which have been made from new felts. Said caps are distributed and sold by the respondent to wholesalers and to retailers without any labels being attached to said caps to indicate that they are, in fact, second-hand caps which have been made over from old, used, and discarded felts. Said caps so sold by the respondent to wholesalers and retailers may be resold by said purchasers to members of the purchasing public without disclosing the fact that said caps have been previously worn and then renovated and made over. Said caps may be sold by the retailers under such circumstances as to indicate that they are, in fact, new caps.

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The cost to respondent of obtaining, renovating, and making over said caps, or of purchasing said renovated and made over caps for resale is much less than the cost of new caps of similar quality made from new felt, and respondent is thereby able to sell said caps to retailers, jobbers, and wholesalers at substantially lower prices than manufacturers of new caps can sell caps of the same or similar quality to retail and wholesale dealers.

PAR. 6. It is a common belief and understanding among wholesale and retail dealers, and the purchasing public, that caps having the appearance of new and unused caps, as do caps distributed and sold by the respondent and by others dealing in said caps, which do not bear labels indicating that said caps are not new caps, are, in fact, caps which are new and unused and have never been worn or used by anyone previously. Said wholesale and retail dealers, and the purchasing public, when buying caps having the appearance of new and unused caps, said caps not having labels indicating that they are not new and unused caps, are entitled to receive new and unused caps and not caps made from secondhand, old, used, and discarded felts which have been renovated and made over.

PAR. 7. The acts and practices of the respondent are calculated to, and do, have the capacity and tendency to induce a substantial number of wholesale and retail dealers and a substantial number of the purchasing public into purchasing said caps made from second-hand, old, used, and discarded felts, in the mistaken belief that they are purchasing new and unused caps made from new felts. As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale and distribution of caps, made from new and unused felts, or in the distribution and sale of caps made from used, old, second-hand, and discarded felts, who truthfully label the character and quality of said caps, in interstate commerce among and between the various States of the United States. In consequence thereof, substantial injury is done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, M. & J. Becker, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, M. & J. Becker, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of hats and caps, including baseball caps, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or by implication, through the sale, or offering for sale, of hats and caps, including baseball caps, manufactured from old, used, second-hand, and discarded felts, without there being stamped upon, affixed, or attached to said hats and caps, in a conspicuous place so as to be easily and readily seen, a word or words clearly indicating that said hats and caps are not manufactured from new and unused felts, or through any other means that said hats and caps manufactured from old, used, second-hand, and discarded felts are manufactured from new and unused felts.

It is further ordered, That the 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 CANDY COMPANY

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

Docket 1807. Complaint, Dec. 24, 1935¹—Decision, Oct. 19, 1936

Where a corporation engaged in manufacture and sale of so-called "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such candy, who buy same in preference to so-called "straight" candy when displayed side by side, by reason of lottery or gambling feature connected with former, and sale of which in market of the other, i. e., the "straight" candy, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of so-called "break-and-take," "draw," or "deal" candy—

Sold to wholesale and retail dealers, together with explanatory display cards for latter's use, or "push cards," as the case might be, (1) assortments of penny candies, in which the procuring of one of the larger pieces, or bars, included as prizes along with majority of uniform pieces making up assortments, was contingent upon chance selection of one of such pieces, concealed color of which differed from that of the majority, and in which purchaser of last piece in assortment also received such a prize, and, (2) assortments in which the fortunate five-cent push from card secured such chance selector a box of candy, in addition to bars received by the others; so packed and assembled that such various assortments could be displayed and offered, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the industry in question through resulting 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, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can thus be sold;

With result that competitors refusing, as aforesaid, to sell candy so packed and assembled that it could be sold to the public by lot or chance, and who could compete on even terms only by giving the same or similar devices to retailers, were put to a disadvantage and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy for resale to the public by lot or chance, to meet the competition of those who sold and distributed candy resold by such

¹ Amended and supplemental.

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methods in response to demand therefor, public and competitors were prejudiced and injured, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry in question:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to wit on May 1, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of 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, and

Whereas, this Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that the American Candy Company has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Milwaukee, State of Wisconsin. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said product, when so sold, to be transported from its place of business in the city of Milwaukee, State of Wisconsin, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been

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for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business respondent is in competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of candy and candy products 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, respondent sells and has sold to wholesale and retail dealers various 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages, nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of chocolate-covered candy of uniform size, shape, and quality, together with a number of larger pieces of candy, and one still larger piece of candy. These larger pieces of candy are to be given as prizes to purchasers of said chocolate-covered candy of a uniform size, shape, and quality in the following manner:

The majority of the said chocolate-covered candies contained in the said assortment have centers of the same color, and a small number of said chocolate-covered candies have centers of a different color. Said pieces of candy of a uniform size, shape, and quality in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the 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 said larger pieces of candy heretofore referred to. The purchaser of the last piece of the aforesaid chocolate-covered candies of a uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge the said largest piece of candy heretofore referred to. The color of the center of said pieces of candy of uniform size, shape and quality is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candies who procure a piece of 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 wholly by lot or chance.

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Respondent furnishes to said wholesale and retail dealers with said assortment of candy a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend or statement informing the prospective purchaser which color of the said colored-center candies contained in said assortment entitles the purchaser to one of the larger pieces of candy, and a legend or statement advising that the purchaser of the last piece of candy will receive the largest piece of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is described as "Play Ball". This assortment consists of a number of candy marbles, together with a number of bars of candy. These bars of candy are to be given as prizes to purchasers of the candy marbles in the following manner:

The majority of said candy marbles contained in said assortment are of one color, but a small number are of a different color. Said candy marbles in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the candy marbles colored differently from the majority are entitled to receive and are to be given free of charge one of the said bars of candy heretofore referred to. The candy marbles are concealed in a compartment at the bottom of the box within which the entire assortment is packed and the prize candy bars are placed in the upper compartment of the box. There is a small opening at one corner of the box leading into the lower compartment. Inserted in this opening is a wooden plunger which, when operated, withdraws one of the candy marbles. The opening and the plunger are so arranged that it is impossible to perceive the color of the marble which the purchaser is about to receive until the plunger has been withdrawn. The aforesaid purchasers of said candy marbles who procure one colored differently from the majority thus procure one of the said bars of candy wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent is composed of a number of candy bars and a number of boxes of candy together with a device commonly called a push card. The bars of candy vary in weight from $1\frac{1}{4}$ ounces to $2\frac{1}{8}$ ounces. The boxes of candy are of varying weights from 4 ounces to 15 ounces. The candy in said assortment is to be distributed in the following manner:

The push card has a number of partially perforated discs and when a push is made and the disc separated from the card, a number is disclosed. Sales are 5¢ each and the card bears statements or legends informing the customer and prospective customer as to which numbers entitle the purchaser to one of the boxes of candy. All other numbers receive a bar of candy. The last push or punch receives the largest

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box of candy. The numbers on the discs are effectively concealed from customers and prospective customers until a selection has been made and the push separated from the card. The fact as to whether a customer receives one of the bars of candy or one of the boxes of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy 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 sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) additional bars of candy; or (c) packages or boxes of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do

not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 1, 1930, issued and served its complaint upon the respondent, American Candy Company, a corporation, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress. Respondent filed answer thereto on June 6, 1930, and thereafter on March 28, 1934, filed a substitute answer, dated February 28, 1934, consenting that the Commission might make, enter, issue, and serve an order to cease and desist from the practices complained of, after first having obtained leave to withdraw its answer filed on June 6, 1930. Subsequent thereto, on April 3, 1934, the Commission entered an order to cease and desist against respondent from the practices complained of in said complaint.

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On September 14, 1935, the Commission entered and served its order vacating and setting aside the aforesaid order to cease and desist theretofore entered on April 3, 1934, and thereafter on December 24, 1935, the Commission issued and served on the respondent an amended and supplemental complaint, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress. Respondent filed answer thereto, and testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner for the Commission, theretofore duly designated by it. Respondent was represented by Irving H. Fathchild, Esq., and while no witnesses were called to testify in opposition to the charges in the complaint, it was stipulated formally on the record by and between counsel for the Commission and for the respondent that the testimony and evidence taken and filed with the Federal Trade Commission in the matter of Walter H. Johnson Candy Company, Docket No. 1817, beginning with page 105 of the original transcript of the testimony and continuing to the end thereof, might and should be considered as testimony on behalf of the Commission and of the respondent, respectively, in the instant proceeding. All the said testimony and evidence hereinabove referred to including the said stipulated testimony and evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint, the testimony and evidence duly recorded and filed in the office of the Commission, including the said stipulated testimony and evidence and brief in support of the complaint, respondent through its counsel having indicated that it did not desire to file any brief nor to orally argue the matter, and the Commission having duly considered the foregoing 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, American Candy Company, is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the city of Milwaukee, State of Wisconsin. Respondent is now and for several years last past has been engaged in the manufacture of candy in Milwaukee, Wis., and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States,

and causes said candy when so sold to be shipped or transported from its principal place of business in Milwaukee, Wis., to purchasers thereof in other States of the United States, at their respective places of business. 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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent is an assortment composed of a number of pieces of chocolate covered candy of uniform size, shape, and quality together with a number of larger pieces of candy and one still larger piece of candy. These larger pieces of candy are given as prizes to purchasers of said chocolate covered candy of uniform size, shape, and quality in the following manner:

The majority of the said chocolate covered candies contained in said assortment 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 retail at the price of 1¢ each, but the purchasers who procure one of the said pieces of candy having a center of a different color than the majority of said candies are entitled to receive, and are given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of the aforesaid chocolate covered candies of uniform size, shape, and quality is entitled to receive, and is given free of charge, the said largest piece of candy heretofore referred to. The color of the center of said pieces of candy of uniform size, shape, and quality is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candy who procure a piece of 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 procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend or statement informing the prospective purchaser which color of the said colored centered candies contained in said assortment entitles the purchaser to one of the larger pieces of candy, and a legend or statement advising that the purchaser of the last piece of candy will receive the largest piece of candy free of charge.

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PAR. 3. Another assortment manufactured and distributed by the respondent is designated as "Play Ball". This assortment is composed of a number of red and black candy marbles together with a number of bars of candy. These bars of candy are given as prizes to purchasers of the candy marbles in the following manner:

The majority of the said candy marbles contained in said assortment are red, but a small number are black. Said candy marbles retail at the price of 1¢ each but the purchasers who procure one of the black candy marbles is entitled to receive, and is given free of charge, one of the said bars of candy heretofore referred to. The purchaser who procures one of the red candy marbles receives only that particular marble. The candy marbles are concealed in a compartment at the bottom of the box within which the entire assortment is packed, and the prize candy bars are placed in the upper compartment of the box. There is a small opening at one corner of the box leading into the lower compartment. Inserted in this opening is a wooden plunger which when operated withdraws one of the candy marbles. The opening and the plunger are so arranged that it is impossible to perceive the color of the marble which the purchaser is about to receive until the plunger has been withdrawn. The aforesaid purchasers of said candy marbles who procure one of the black marbles thus procure one of the said bars of candy wholly by lot or chance.

Respondent furnishes to wholesale and retail dealers a display card to be used by the retail dealer in offering said candy for sale to the public. The display card bears a legend, or statement, or statements, informing the prospective purchasers that the candy contained in said assortment is being distributed in accordance with the above described sales plan or method.

PAR. 4. Another assortment manufactured and distributed by the respondent is composed of a number of candy bars and a number of boxes of candy together with a device commonly called a "push card". The candy in said assortment is distributed in the following manner:

The "push card" has a number of partially perforated disks, and when a push is made and the disk separated from the card, a number is disclosed. Sales are 5¢ each and the card bears statements or legends, informing customers and prospective customers as to which numbers entitle the purchasers to one of the boxes of candy. All other numbers receive a bar of candy. The numbers on the disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular disk separated from the card. The fact as to whether a purchaser receives one of

the bars of candy or one of the boxes of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 5. The candy assortments involving the lot or chance feature as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "break and take", "draw", or "deal" assortments. Assortments of candy without the lot or chance feature, 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 designate these types of assortments.

PAR. 6. Numerous retail dealers purchase and have purchased the assortments described in paragraphs 2, 3, and 4 above, direct from respondent or from wholesale dealers and jobbers who in turn have purchased said assortments from the respondent. Such retail dealers display said assortments for sale to the public as packed and assembled by the respondent, and the candy contained in said assortments is sold and distributed to the consuming public as suggested by the respondent or by means of the "push card" furnished by the respondent, and in accordance with the legends printed on the display cards or on the "push card".

PAR. 7. The respondent sells its merchandise to retail dealers and wholesale dealers and jobbers in the north, south, and middle western parts of the United States; the greater bulk of its merchandise is sold between Colorado and western New York State. Respondent's merchandise, both "straight," and "break and take," or "draw," or "deal" assortments, is resold in practically all stores where candy is sold. It was stipulated at the hearing in this case that the 5¢ "push card" assortment, referred to in paragraph 4 hereof, has a substantial distribution among retail dealers where the consumers are predominantly but not exclusively adults, as distinguished from children. It was also stipulated at the hearing in this case that there are certain instances where the assortments described in paragraphs 2, 3, and 4 hereof have been purchased by dentists, or barbers, or in some cases by grocery stores where the proprietor of the office or store distributed the candy gratuitously among children of patrons or callers and gives them the prize piece or package if they select the prize winning smaller piece or number. It was further stipulated that this distribution was not extensive.

All sales made by the respondent are absolute sales, and the respondent retains no control over the goods after they are delivered to the retail dealers or to the wholesale dealers and jobbers. The assortments are packed in such manner that they can be displayed and offered for sale, and are designed to be displayed and offered

for sale without alteration, addition, or rearrangement to the consuming public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy by retail dealers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to retail dealers and wholesale dealers and jobbers for resale to retail dealers of assortments of candy assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the majority of said assortments 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, without alteration, addition, or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 8. Many competitors of respondent regard such methods of sale and distribution as morally bad and as 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 sold to the public by lot or chance. These competitors are thereby put to disadvantage in competing. 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" candy show a continued decrease.

There is a 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 resold 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 respondent's 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 principal demand in the trade for the "break and take," or "deal," or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take," or "draw," or "deal" assortments and the

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possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," or "draw," or "deal" 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. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight" candy in interstate commerce in competition with the "break and take," or "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature indicated with the "break and take," or "draw," or "deal" candy.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, American Candy Company, a corporation, 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of the respondent, the testimony and evidence taken and the testimony and evidence stipulated as a part of the record before Miles J. Furnas, an examiner of the Commission, there-

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tofore duly designated by it, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated an Act of 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, American Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, and sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made, or are designed to be made, by means of a lottery, gaming device, or gift enterprise;

(2) Supplying to, or placing in the hands of retail and wholesale dealers and jobbers, packages or assortments of candy which are used, or are designed to be 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 contained in said assortments 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, of different colors or 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 of a particular color or with a center of a particular color;

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, assortments of candy together with a device commonly called a "push card" for use, or which is designed to be used, in the distribution of said candy to the public at retail;

(5) Furnishing to retail and wholesale dealers and jobbers a display card, or a device commonly called a "push card", either with assortments of candy or separately, bearing a legend or legends or statements informing the public that the candy is being sold by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise;

And it is further ordered, That the respondent, American 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
DOMINION DISTILLERIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2452. Complaint, June 21, 1935—Decision, Oct. 19, 1936*

Where a corporation, engaged as wholesaler and rectifier in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages, and in the production of gins by process of rectification whereby alcohol, purchased but not produced by it, was redistilled over juniper berries and other aromatics through a still used by it for said purpose, and in the sale of its aforesaid products to wholesalers and retailers, in substantial competition with others engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof; and also with those engaged in purchasing, rectifying, blending, and bottling whiskies, etc., in rectifying plants, and in selling same; and including, among its said competitors, those who, as manufacturers and distillers from mash, wort, or wash of whiskies, etc., sold by them, truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate name and on their stationery, catalogs, and labels, and also those engaged in purchasing, rectifying, etc. whiskies, etc. who do not thus use said words in their corporate, or trade names, nor on their stationery, catalogs, advertising, or on their labels—

Represented, through the use of word "Distilleries" in its corporate name, printed on its stationery, catalogs, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished said customers with the means of similarly representing to said customers' retail dealer vendees and to the ultimate consuming public, that it was a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages contained in said bottles were by it made through the process of distillation from mash, wort, or wash;

The facts being it did not distill said whiskies, etc. thus bottled, labeled, and sold by it, and did not own, operate, or control any place or places where spirituous beverages are made by a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture is complete, as long definitely understood from word "distilleries" by liquor wholesalers and retailers and by the ultimate purchasing public; and did not "distill" in the sense commonly accepted and understood by those engaged in the liquor trade and the public, by virtue of its rectification of alcoholic spirits by redistillation over juniper berries and other aromatics through the use of a still operated by it, as aforesaid;

With effect of misleading and deceiving dealers and the purchasing public into the beliefs that it was a distiller, and that the whiskies, gins, and other spirituous beverages sold by it were made or distilled by it from mash,

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wort, or wash, by one continuous process, and of inducing dealers and the purchasing public, acting in such beliefs, to buy its said whiskies, etc. rectified and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name, or in any other manner, misrepresent that they are distillers of bottled spirituous liquors, purchase of which from distillers is preferred by a substantial portion of the purchasing public; to the substantial injury of substantial competition in commerce:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Hollander, Leichter & Klotz, of Union City, N. J., 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 Dominion Distilleries, 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 the 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 is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Jersey City, in said State. It is now, and for more than one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the sale thereof

in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages in rectifying plants and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold.

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and transported in the sense in which the word "distilleries" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, cordials, liqueurs, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by respondent are manufactured or distilled by it from mash, wort, or wash, by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 21, 1935, issued, and on June 24, 1935, served its complaint in this proceeding upon respondent, Dominion Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, respondent applied for permission to withdraw its said answer and file in lieu thereof a substituted answer waiving hearings on the charges set forth in the complaint in this proceeding, stating that it does not contest the said proceeding, and that it admits all of the material allegations of the complaint to be true, and that the Commission might, without further evidence or other intervening procedure, make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations charged in the said complaint; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Jersey City, in said State. It is now, and for more than one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in the

sale there of in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, liqueurs, and other alcoholic beverages in rectifying plants and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products thereof has had, and still has, a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: places where spirituous liquors are manufactured by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, cordials, liqueurs, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense

in which the word "distill" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, cordials, liqueurs, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof are calculated to and have a capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by respondent are manufactured or distilled by it from mash, wort, or wash, by one continuous process, and are calculated to, and have, the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name, or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. Existing regulations, promulgated under the Federal Alcohol Administration Act, approved August 29, 1935 (49 Stat. L. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics, in the manner in which this respondent produces its gin, may call such resulting product "distilled gin", and require that the labels state thereon who distilled it. This is to enable the rectifier to have the benefit of any distinction between gin produced by such method and "cold" or compound gin pre-

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pared by mixing alcohol with essential oils. The Commission has, therefore, excepted gins produced in the aforesaid manner from the application of its order to cease and desist as hereinafter set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, Dominion Distilleries, Inc., 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substituted answer of respondent, filed herein, admitting all the material allegations of the Commission's complaint to be true, stating that it does not contest the said proceeding and waiving all intervening procedure; briefs and oral argument of both counsel having been waived, 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, Dominion Distilleries, Incorporated, its officers, representatives, agents, and employees, in connection with the sale, offering for sale and distribution in interstate commerce or in the District of Columbia, of whiskies, gins, and all other spirituous beverages, except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through the use of the word "Distilleries" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or any other spirituous beverages; (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from

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mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate or control such a place or places.

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

IN THE MATTER OF
WORLD LIBRARY GUILD, INC.

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

Docket 2511. Complaint, Nov. 25 1935¹—Decision, Oct. 19, 1936

Where a corporation, engaged in the sale and distribution of a set of books under the title "Twentieth Century Encyclopedia," together with a revision service therefor and memberships in a research bureau to be used in connection therewith—

- (a) Represented through soliciting traveling agents and salesmen, and advertising matter, prospectuses, stretchers, order blanks or contracts, and other literature and paraphernalia supplied said individuals, that as a special introductory offer a limited number of persons in each place visited by a salesman would be given a set of said Encyclopedia free, if they subscribed for the ten-year loose-leaf semi-annual extension service and binders to be furnished by it at a stated price, and that the total cost to the purchaser for said service was the amount stated, and that the regular and usual price of said Encyclopedia and service or supplements was, or would be, some other sum greatly in excess of the amount for which it was then being offered; the facts being said encyclopedia was not free but the price asked and charged included the regular price therefor and of any additional services furnished, offer was not limited but available to any person having the requested purchase price, and figure named and asked for such extension service was not, as represented, the total cost, and did not include an undisclosed additional charge of fifty cents per year for such revision service or supplements;
- (b) Falsely represented, as aforesaid, that it was the publisher of said encyclopedia, and that said work or set of books was new, accurate, and up to date, and constituted a complete and concise encyclopedia and reference work, and a concise and accurate review of all branches of the world's knowledge and human thought worthy of preservation, and that it conducted a research bureau for the service of its customers, and made other representations of like import; the facts being that it was out of date and inaccurate in its various editions as published, and no edition thereof ever was a complete, concise, and comprehensive encyclopedia, and said various statements and representations made by it were false;
- (c) Falsely represented, as aforesaid, that its general editorial advisory board was composed of certain named individuals, officials, scholars, and personages connected with various American universities and public institutions;
- (d) Falsely represented, as aforesaid, that a certain individual named and identified by it as former reference librarian of the Library of Congress, editor-in-chief of Collier's New Encyclopedia and Reynolds' Atlas and Gazetteer, was editor-in-chief of its said encyclopedia and each edition thereof, and

¹Amended and supplemental.

that another individual named and identified by it as associate editor of the New International Encyclopedia was managing editor of its own said encyclopedia ;

With intent and effect of enhancing the sale of said encyclopedia and services through such false, deceptive, and misleading representations and statements, and of inducing members of the public to purchase the same in reliance thereon as true, and of thereby diverting trade to it from competitors who do not misrepresent the kind, nature, or value of their books and publications, nor the terms and conditions upon which the same are sold ; to the substantial injury of competition in commerce :

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Campbell, Clithero & Fischer, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL 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 World Library Guild, 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 of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, World Library Guild, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at 1440 Broadway, New York City, N. Y., where it is and has been engaged for more than four years last past in the sale and distribution in interstate commerce of a certain set of books under the title of the "Twentieth Century Encyclopedia", together with a revision service therefor and memberships in a research bureau to be used in connection therewith. The officers of respondent are Horace A. Hocking, president; S. Kaplon, secretary, and Max Moster, treasurer. Respondent through various agents, salesmen, solicitors, and employees, has been and is engaged in the business of offering to sell, selling, and distributing said "Twentieth Century Encyclopedia", with its revisions and research bureau memberships, to persons located at points in various States of the United States and the District of Columbia, and causes said books or publications when so sold to be transported from said New York City, N. Y., and also from the city of Cleveland,

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Ohio, through and into other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations, and in the course and conduct of said business respondent is in competition with various other persons, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of its business in selling and seeking to sell its said books, revision service and research bureau memberships, respondent employs various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for and to sell said commodities to prospective purchasers in the several States, said salesmen and representatives customarily traveling from place to place and canvassing prospective purchasers at such places. Respondent furnishes such salesmen and representatives with advertising folders, prospectuses, stretchers, order blanks or contracts and other literature and paraphernalia, which is distributed with and used in connection with the sale of said books, extension service, and memberships. Upon a sale being made by such salesmen or representative, the purchaser is asked to sign a printed order or contract, which is then transmitted to the respondent. Respondent thereupon causes a shipment of said books to be made to such purchaser either from New York, N. Y., or Cleveland, Ohio, and transmits to the purchaser a purported certificate of membership in the "World Library Guild Research Bureau" and semi-annual extension service. At the time the order is signed the salesmen or representatives collect a down payment from the purchaser, which includes the salesman's commission for making the sale. The order or contract so signed by the purchaser requires additional payments in monthly installments until the total purchase price is paid in full.

PAR. 3. During the time above mentioned in the course and conduct of said business, respondent, through its agents, salesmen, representatives, and employees, and by means of its advertisements, letters, order-blanks, and other literature distributed and exhibited to prospective purchasers has represented and does now represent to various individuals throughout the United States, the following: That as a special introductory offer a limited number of persons in each place visited by a salesman are given a set of the Twentieth Century Encyclopedia free if they subscribe for the ten year loose-leaf semi-annual extension service and binders to be furnished by respondent at a stated price, usually \$39.50; that the total cost to the purchaser for said revision service is the amount set forth in said order, usually \$39.50; that respondent is and was the publisher of said Twentieth Century Encyclopedia and each edition thereof; that said encyclopedia is the Century Encyclopedia brought up to date, and that respondent has pur-

chased the Century Encyclopedia and is the owner thereof; that the regular and usual price of said encyclopedia when offered for sale and said extension service or revision supplements was, or would be, \$79.00, or some other sum greatly in excess of the amount for which the same was being offered to prospective purchasers; that said Twentieth Century Encyclopedia and each edition thereof is, and was when issued, new, accurate and up to date as to its subject matter, and that it is, and each edition was, a complete, concise, and comprehensive encyclopedia and reference work; that said encyclopedia is, and each edition was, a concise and accurate review of all branches of the world's knowledge; that said encyclopedia contains, and each edition did contain, all human thought and knowledge worth preserving; that the following named individuals are and were contributing editors to said encyclopedia, and each edition thereof, and constitute, and did constitute, its general editorial advisory board, to wit:—Loomis Havemeyer, Ph. D., Registrar of Sheffield Scientific School, Yale University, and Instructor in Anthropology and Economic Geography; George Maxwell Howe, Ph. D., Exchange Professor, German Department, Harvard University, Cambridge, Mass.; D. R. Fox, Ph. D., Assistant Professor of History, Columbia University, Research Associate, Carnegie Institute; James Lukens McConaughy, Ph. D., President, Wesleyan University, Middletown, Conn.; Henry Jackson Waters, LL. D., ex-president, State Agricultural College, Manhattan, Kans.; and that Francis J. Reynolds, former Reference Librarian, Library of Congress, editor-in-chief of *Colliers New Encyclopedia*; Reynolds's *Atlas and Gazetteer*, is and was editor-in-chief of said Twentieth Century Encyclopedia, and each edition thereof, and that Allen L. Churchill, associate editor, *New International Encyclopedia*, is, and was, the managing editor thereof; that respondent conducts a research bureau for the service of its customers; and other representations of like import.

PAR. 4. That in truth and in fact: Said Twentieth Century Encyclopedia is not free, is not given away to customers who subscribe to the extension service or supplements, but the price asked and charged includes the regular price of the books and any additional services furnished; that the offer of sale made is not a special introductory offer made to a limited number of persons, but on the contrary is available to anyone having the requested purchase price; that respondent is not, and never was, the publisher of said encyclopedia, but on the contrary the same is, and was, published by the World Syndicate Publishing Company of Cleveland, Ohio; that the stated price, usually \$39.50, is not the total cost to the purchaser for such extension service or supplements, but on the contrary there is an additional charge of

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fifty cents per year for such revision service or supplements which fact is not divulged when the sale is made; that respondent has not purchased the Century Encyclopedia and is not the owner thereof, said Century Encyclopedia being, or having been, a separate and distinct work from the Twentieth Century Encyclopedia; that the regular and usual price for said encyclopedia and revision service offered to purchasers generally is, and always has been, between \$33.50 and \$39.50, and no sets of said encyclopedia or the services furnished in connection therewith have been sold for a sum greater than \$39.50; that said Twentieth Century Encyclopedia was not, and is not, new, accurate, or up to date as to its subject matter, but on the contrary is, and was, out of date and inaccurate in the various editions as same have been published; that said encyclopedia is not and no edition thereof ever was a complete, concise and comprehensive encyclopedia; that said encyclopedia is not, and no edition thereof ever was, a complete and accurate review of all the whole world's knowledge; that said encyclopedia does not and no edition thereof ever did contain all human thought and knowledge worth preserving; that the individuals named in said encyclopedia as contributing editors and members of its general editorial advisory board as in paragraph 3 above listed are not and have not been contributing editors of said encyclopedia, nor any edition thereof, nor are said individuals, or any of them, nor are they, or have they been, members of its general editorial advisory board; that Francis J. Reynolds, above named, is not and was not the editor-in-chief of said encyclopedia, or any edition thereof, and that Allen L. Churchill, above named, is not, and was not, the managing editor thereof; that respondent does not conduct a research bureau for the service of its customers; that the delivery of said revision service or supplements to the purchaser is contingent upon the forwarding of a coupon accompanied by twenty-five cents at a specified time each year, which fact is not divulged to prospective purchasers by respondent at the time said encyclopedia and revision service are offered for sale and sold.

PAR. 5. Respondent, its agents, salesmen, representatives, and employees, by means of the false, deceptive, and misleading representations and statements above set forth, have sold and are selling its said books and publication known as the "Twentieth Century Encyclopedia," including the extension and research services, to members of the public throughout the United States, who are thereby induced to purchase the same because of the aforesaid false, deceptive and misleading statements and representations.

PAR. 6. The above alleged acts, things and practices of respondent are each and all of them to the prejudice and injury 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 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 25th day of November, A. D. 1935, issued and served its amended and supplemental complaint in this proceeding upon respondent, World Library Guild, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said amended and supplemental complaint was an amendment of and a supplement to a complaint issued by the Commission on the 12th day of August, A. D., 1935 and served upon said respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and said amended and supplemental complaint and the filing of respondent's answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it and in opposition to the allegations of the complaint by Campbell, Clithero, and Fischer, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and the answer thereto, testimony and other evidence, briefs in support of the amended and supplemental complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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, World Library Guild, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business at 1440 Broadway, New York City, N. Y., where it is and has been engaged

for more than five years last past in the sale and distribution in interstate commerce of a certain set of books under the title of the "Twentieth Century Encyclopedia", together with a revision service therefor and memberships in a research bureau to be used in connection therewith. The officers of respondent are Horace A. Hocking, president; S. Kaplon, secretary, and Max Moster, treasurer. Respondent through various agents, salesmen, solicitors, and employees, has been and is engaged in the business of offering to sell, selling, and distributing said "Twentieth Century Encyclopedia", with its revisions and research bureau memberships, to persons located at points in various States of the United States and the District of Columbia, and causes said books or publications when so sold to be transported from said New York City, N. Y., and also from the city of Cleveland, Ohio, through and into other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations, and in the course and conduct of said business respondent is in competition with various other corporations, partnerships, firms, and individuals engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent employs various agents, solicitors, and salesmen who sell said commodities to prospective purchasers, travel from place to place and canvass prospective purchasers. Respondent furnishes such salesmen and representatives advertising matter, prospectuses, stretchers, order blanks, or contracts and other literature and paraphernalia, which are distributed with or used in connection with the sale of said books, revision or extension service and research bureau memberships. Upon a sale being made by such salesman or representative, the purchaser is asked to sign a printed order or contract, which is then transmitted to the respondent. Respondent thereupon causes a shipment of said books to be made to such purchaser either from New York, N. Y., or Cleveland, Ohio, and transmits to the purchaser a certificate of membership in the "World Library Guild Research Bureau" and semi-annual extension service. At the time the order is signed, the salesmen or representatives usually collect a down payment from the purchaser. The order or contract so signed by the purchaser usually requires additional payments in installments until the total purchase price is paid in full.

PAR. 3. During the time above mentioned in the course and conduct of said business, respondent, through its agents, salesmen, representatives, and employees, and by means of its advertisements, letters, order blanks and other literature distributed and exhibited

to prospective purchasers has represented and does now represent to various individuals throughout the United States, the following: That as a special introductory offer a limited number of persons in each place visited by a salesman are given a set of the Twentieth Century Encyclopedia free if they subscribe for the ten year loose-leaf semi-annual extension service and binders to be furnished by respondent at a stated price, usually \$39.50; that the total cost to the purchaser for said revision service is the amount set forth in said order, usually \$39.50; that respondent is and was the publisher of said Twentieth Century Encyclopedia and each edition thereof; that the regular and usual price of said encyclopedia when offered for sale and said extension service or revision supplements was, or would be, \$79.00, or some other sum greatly in excess of the amount for which the same was being offered to prospective purchasers; that said Twentieth Century Encyclopedia and each edition thereof is, and was when issued, new, accurate and up to date as to its subject matter, and that it is, and each edition was, a complete, concise and comprehensive encyclopedia and reference work; that said encyclopedia is, and each edition was, a concise and accurate review of all branches of the world's knowledge; that said encyclopedia contains, and each edition did contain, all human thought and knowledge worth preserving; that the following named individuals are and were contributing editors to said encyclopedia, and each edition thereof, and constitute, and did constitute, its general editorial advisory board, to wit:—Loomis Havemeyer, Ph. D., Registrar of Sheffield Scientific School, Yale University, and Instructor in Anthropology and Economic Geography; George Maxwell Howe, Ph. D., Exchange Professor, German Department, Harvard University, Cambridge, Mass.; D. R. Fox, Ph. D., Assistant Professor of History, Columbia University, Research Associate, Carnegie Institute; James Lukens McConaughy, Ph. D., President, Wesleyan University, Middletown, Conn.; Henry Jackson Waters, LL.D., ex-president, State Agricultural College, Manhattan, Kansas; and that Francis J. Reynolds, former Reference Librarian, Library of Congress, Editor in Chief of Colliers New Encyclopedia; Reynolds's Atlas and Gazetteer, is and was Editor in Chief of said Twentieth Century Encyclopedia, and each edition thereof, and that Allen L. Churchill, Associate Editor, New International Encyclopedia, is, and was, the Managing Editor thereof; that respondent conducts a Research Bureau for the service of its customers; and other representations of like import.

PAR. 4. That in truth and in fact: Said Twentieth Century Encyclopedia is not free, is not given away to customers who sub-

scribe to the extension service or supplements, but the price asked and charged includes the regular price of the books and any additional services furnished; that the offer of sale made is not a special introductory offer made to a limited number of persons, but on the contrary is available to anyone having the requested purchase price; that respondent is not, and never was, the publisher of said encyclopedia, but on the contrary the same is, and was, published by the World Syndicate Publishing Company of Cleveland, Ohio; that the stated price, usually \$39.50, is not the total cost to the purchaser for such extension service or supplements, but on the contrary there is an additional charge of fifty cents per year for such revision service or supplements which fact is not divulged when the sale is made; that the regular and usual price for said encyclopedia and revision service offered to purchasers generally is, and always has been, either \$33.50 or \$39.50, and no sets of said encyclopedia or the services furnished in connection therewith have been sold for a sum greater than \$39.50; that said Twentieth Century Encyclopedia was not, and is not, new, accurate or up to date as to its subject matter, but on the contrary is, and was, out of date and inaccurate in the various editions as same have been published; that said encyclopedia is not and no edition thereof ever was a complete, concise and comprehensive encyclopedia; that said encyclopedia is not, and no edition thereof ever was, a complete and accurate review of all the whole world's knowledge; that said encyclopedia does not and no edition thereof ever did contain all human thought and knowledge worth preserving; that the individuals named in said encyclopedia as contributing editors and members of its general editorial advisory board as in paragraph 3 above listed are not and have not been contributing editors of said encyclopedia, nor any edition thereof, nor are said individuals, or any of them, or have they been, members of its general editorial advisory board; that Francis J. Reynolds, above named, is not and was not the editor-in-chief of said encyclopedia, or any edition thereof, and that Allen L. Churchill, above named, is not, and was not, the Managing Editor thereof; that respondent does not conduct a Research Bureau for the service of its customers.

PAR. 5. Respondent, through its agents, salesmen, representatives, and employees, by means of the false, deceptive, and misleading representations and statements above set forth, has sold and is selling its said books and publication known as the "Twentieth Century Encyclopedia," including the extension and research services, to members of the public throughout the United States, who are thereby in fact induced to purchase the same because of the aforesaid false, deceptive, and misleading statements and representations. That

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respondent's purpose in making and causing such false and misleading representations to be made is to enhance the sale of said "Twentieth Century Encyclopedia," including the extension and research services, and to induce members of the public to purchase said product relying upon said misrepresentations and acting in the belief that the same are true, thereby diverting trade to respondent from its competitors who do not misrepresent the kind, nature or value of their books and publications, nor the terms and conditions upon which the same are sold, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, World Library Guild, Inc., a corporation, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of respondent, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said amended and supplemental complaint and in opposition thereto, briefs filed herein, and oral arguments by Allen C. Phelps, counsel for the Commission, and by Campbell, Clithero, and Fischer, counsel 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, World Library Guild, Inc., a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of a publication now known and designated as the "Twentieth Century Encyclopedia," under that, or any other name, a revision service therefor and memberships in a research bureau to be used in connection therewith, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

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(1) That said "Twentieth Century Encyclopedia" is given away free to persons who subscribe to the ten year loose-leaf semi-annual extension service designed for use with said encyclopedia.

(2) That the total cost to the purchaser for said revision service for said encyclopedia is a certain stated sum unless when there is an additional coupon charge for the semi-annual revision supplements, such coupon charge is included in said stated sum.

(3) That the World Library Guild, Inc., is the publisher of said "Twentieth Century Encyclopedia."

(4) That the regular and usual price of said "Twentieth Century Encyclopedia" is an amount in excess of the amount for which the same is being regularly and customarily offered to prospective purchasers.

(5) That said "Twentieth Century Encyclopedia" is new, accurate and up to date as to its subject matter and that it is a complete, concise and comprehensive encyclopedia and reference work.

(6) That said "Twentieth Century Encyclopedia" is a concise and accurate review of all branches of the world's knowledge.

(7) That said "Twentieth Century Encyclopedia" contains all human thought and knowledge worth preserving.

(8) That the following named individuals are contributing editors to said "Twentieth Century Encyclopedia" and constitute its general editorial advisory board, to-wit: Loomis Havemeyer, Ph. D., Registrar of Sheffield Scientific School, Yale University, and Instructor in Anthropology and Economic Geography; George Maxwell Howe, Ph. D., Exchange Professor, German Department, Harvard University, Cambridge, Mass.; D. R. Fox, Ph. D., Assistant Professor of History, Columbia University, Research Associate, Carnegie Institute; James Lukens McConaughy, Ph. D., President, Wesleyan University, Middletown, Conn.; Henry Jackson Waters, LL.D., Ex-president, State Agricultural College, Manhattan, Kansas; or that any other individual is an editor, a contributing editor or a member of respondent's general editorial advisory board, unless such is the fact.

(9) That Francis J. Reynolds, former Reference Librarian, Library of Congress, Editor in Chief of Colliers New Encyclopedia, Reynolds' Atlas and Gazetteer, is the Editor in Chief of said "Twentieth Century Encyclopedia", and that Allen L. Churchhill, Associate Editor, New

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International Encyclopedia, is the Managing Editor thereof, or that any other person is in any way connected with said encyclopedia unless such is the fact.

(10) That the World Library Guild, Inc. conducts a Research Bureau for the service of its customers.

It is further ordered, That the 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
LOUIS FABRIKANT, TRADING AS LOUIS FABRIKANT
COMPANY

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

Docket 2742. Complaint, Mar. 13, 1936—Decision, Oct. 19, 1936

Where an individual, engaged in the sale and distribution of textile fabrics, including a certain fabric made from brushed tricot, knitted rayon and silk, with a velvety appearance, and with a resemblance to fabrics made from camels' hair, so that by virtue of appearance of material it would lead purchaser, barring opportunity to compare with material made thereof, to believe same was composed, in part at least, from hair or wool of camel, and which fabric, while used mostly in manufacture of dresses, was also employed for manufacture of mufflers and shawls—

Adopted trade-mark "Camel Suede" as a name for said fabric, and registered same in Patent Office, and prominently and conspicuously displayed or featured said name in advertisements suggested, phrased, and worded by him for use of wholesalers and retailers in offering and selling said fabric to ultimate purchasers thereof, and stated in many of said advertisements, that said product, thus named, was a very soft wool and rayon mixture, with velvety finish, and failed, in majority of such advertisements, adequately to qualify or correct, through statements in small and inconspicuous print, impression made through conspicuous display of phrase in question; notwithstanding fact said fabric contained no camel's hair nor wool from either sheep or camels, but was made solely from silk and rayon;

With result that there was conveyed to mind of reader association of camel's wool or camel's hair with fabric displayed or advertised, and such impression prevailed notwithstanding subsequent explanations, and with effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that said fabric was made from camel's hair or contained wool from sheep or camel, and of unfairly diverting trade to him from competitors who do not engage in similar practices and misrepresent character or quality of merchandise sold by them, or represent their said fabrics as made from wool of sheep or camels, for which there has long been preference on part of a substantial portion of purchasing public as superior to other fabrics designed for similar usage; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Pencke 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,"

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the Federal Trade Commission, having reason to believe that Louis Fabrikant, trading as Louis Fabrikant 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, Louis Fabrikant, is an individual, trading and doing business under the firm name and style of Louis Fabrikant Company, with his principal place of business at 450 Seventh Avenue, in the city and State of New York. The respondent is now, and for more than two years last past has been, engaged in the sale and distribution of textile fabrics used in the manufacture of dress goods. Said respondent, being engaged in business as aforesaid, causes the said merchandise to be shipped from said place of business in the State of New York to purchasers thereof located at various points in States other than the State of New York and in the District of Columbia, and there is now, and has been at all times mentioned herein a constant current of trade and commerce in said textile fabrics sold by the respondent among and between the various States of the United States. In the course and conduct of his said business said respondent is now, and has been at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distributon of textile fabrics used in the manufacture of dress goods in commerce among and between the various States of the United States.

PAR. 2. Respondent has invented and perfected a certain fabric made from brushed tricot knitted rayon and silk that has a velvety appearance and resembles fabrics made from Camel's hair. He has adopted the trade-mark "Camel Suede" as a name for this fabric and has had said name registered in the United States Patent Office. Said fabric, which forms a substantial part of respondents line of textile fabrics, is manufactured and dyed by a silk mill in Reading, Pa., and shipped to respondent's place of business in New York.

Respondent sells said fabric to the wholesale and retail trade in various States. The respondent has suggested and assisted in the phrasing and wording of advertisements used by the said wholesalers and retailers in offering for sale and in selling said fabric to the ultimate purchasers thereof. These advertisements are inserted in newspapers and are otherwise displayed to the purchasing public. In all of said advertisements the name "Camel Suede" is prominently and conspicuously displayed so as to serve as a representation to the

purchasing public that said fabric is made from camel wool. In many of said advertisements the statement is made that "Camel Suede" is a very soft wool and rayon mixture with a velvety finish. In truth and in fact said fabric does not contain any camel's hair whatever and contains no wool of either sheep or camels but is made solely from silk and rayon.

PAR. 3. Over a period of many years a substantial portion of the purchasing public have expressed, and have had, a preference for purchasing certain fabrics containing camels' hair or made from wool from sheep or camels, believing that said fabrics so made are of superior quality to other fabrics designed for similar usage.

There are among respondent's competitors many who do not in any way misrepresent the quality, material, or character of the fabrics sold and distributed by them and do not represent that said fabrics are made from wool of sheep or camels when such is not the fact.

PAR. 4. The acts and representations of the respondent in adopting the name Camel Suede for his fabric herein described, and in representing said fabric to be made from wool, in offering for sale and selling his fabric was, and is calculated to, and had, and now has, a tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said fabric is made from camels' hair or contains wool from sheep or camels. Further, as a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a substantial portion of said purchasing public has purchased a substantial volume of said fabric with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of selling textile fabrics for use in the manufacture of dress goods who truthfully advertise and represent the quality, material and character of their respective fabrics. As a result thereof substantial injury has been, and is now being, done by respondent to substantial competition in commerce as herein set out.

PAR. 5. The above acts and things done and caused to be done by the respondent were and are 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

to define its powers and duties, and for other purposes," the Federal Trade Commission, on March 13, 1936, issued and served its complaint in this proceeding upon respondent Louis Fabrikant, trading as Louis Fabrikant Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Maurice Yanoff, an employee of the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid, and the Commission having duly considered the same, and being now 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, Louis Fabrikant, is an individual, trading and doing business under the firm name and style of Louis Fabrikant Company, with his principal place of business at 450 Seventh Avenue, in the city and State of New York. He is now, and for more than two years last past has been, engaged in the sale and distribution of textile fabrics used in the manufacture of dress goods. The respondent, being engaged in business as aforesaid, causes the said merchandise to be shipped from said place of business in the State of New York to purchasers thereof located at various points in States other than the State of New York and in the District of Columbia, and there is now, and has been at all times mentioned herein a constant current of trade and commerce in said textile fabrics sold by the respondent among and between the various States of the United States. In the course and conduct of his said business said respondent is now, and has been at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distribution of textile fabrics used in the manufacture of dress goods in commerce among and between the various States of the United States.

PAR. 2. Respondent has invented and perfected a certain fabric made from brushed tricot knitted rayon and silk that has a velvety

appearance and resembles fabrics made from camels' hair. He has adopted the trade-mark "Camel Suede" as a name for this fabric and has had said name registered in the United States Patent Office. Said fabric, which forms a substantial part of respondent's line of textile fabrics, is manufactured and dyed by a silk mill in Reading, Pa., and shipped to respondent's place of business in New York.

PAR. 3. Respondent sells said fabric to the wholesale and retail trade in various States. He has suggested and assisted in the phrasing and wording of advertisements used by the said wholesalers and retailers in offering for sale and in selling said fabrics to the ultimate purchasers thereof. These advertisements are inserted in newspapers and are otherwise displayed to the purchasing public. In all of said advertisements the name "Camel Suede" is prominently and conspicuously displayed so as to serve as a representation to the purchasing public that said fabric is made from camel wool. In many of said advertisements the statement is made that "Camel Suede" is a very soft wool and rayon mixture with a velvety finish. The fabric does not contain any camel's hair. It contains no wool of either sheep or camel. It is made solely from silk and rayon. While the majority of the advertisements contain a description of the materials from which said product is manufactured, such statements are made in small and inconspicuous print so that the first impression made upon the reader is the conspicuously displayed phrase "Camel Suede". There is conveyed to the mind of the reader or purchaser the association of camel's wool or camel's hair with the fabric displayed or advertised and that impression generally prevails in spite of any subsequent explanations. The appearance of the material is such that unless there is opportunity to compare it with material manufactured of camel's hair or camel's wool, it will lead the purchaser into the belief that it is made at least partially from the hair or wool of the camel. While the said material is used for the most part in the manufacture of ladies' dresses, it is also used for manufacturing mufflers and shawls, both of which commodities are likewise made from material composed of camel's hair or wool.

PAR. 4. Over a period of many years a substantial portion of the purchasing public has expressed, and has had, a preference for purchasing certain fabrics containing camel's hair or made from wool from sheep or camels, believing that said fabrics so made are of superior quality to other fabrics designed for similar usage.

There are among respondent's competitors many who do not in any way misrepresent the quality, material or character of the fabrics sold and distributed by them and do not represent that said fabrics are made from wool of sheep or camels, when such is not the fact.

PAR. 5. The representations of the respondent in adopting the name "Camel Suede" for his fabric herein described, and in representing said fabric to be made from wool, in offering for sale and selling said fabrics were, and are, calculated to, and have had, and now have, a tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said fabric is made from camel's hair or contains wool from sheep or camels. As a result thereof, trade is unfairly diverted to the respondent from his competitors who do not engage in similar practices and who do not misrepresent the character or quality of the merchandise which they sell. By reason of the acts and practices of the respondent, substantial injury has been done by respondent to competition, in commerce among and between the various States of the United States.

CONCLUSION

The foresaid acts and practices of the respondent, Louis Fabrikant, trading as Louis Fabrikant Company, 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, approved September 26, 1914 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by M. Yarnoff, counsel 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, Louis Fabrikant, trading as Louis Fabrikant Company, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of textile fabrics used in the manufacture of dress goods in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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(a) Representing, directly or indirectly that textile fabrics which contain no wool of the sheep or hair of the camel are made from wool or from camel's hair;

(b) Using the word "camel" either alone or in conjunction with other words, in advertisements, on labels, and tags, or in any other manner whatever, to designate a textile fabric which does not contain camel's hair or camels' wool.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF
JOHN H. MEYER, TRADING AS MED-DENTAL SYSTEMS
COMPANY

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

Docket 2798. Complaint, May 8, 1936—Decision, Oct. 19, 1936

Where a corporation engaged long and continuously in manufacture and sale of a professional accounting system, with desks, cabinets, books, and records specially designed for use by physicians and dentists, and which (1) included forms and charts in use for many years, (2) constituted result of a great amount of time, labor, research, and expenditure of money, (3) possessed features considered unique to such an extent that, observed in any professional accounting system, they were identified and considered as its own, and (4) had become well and favorably known by name to the purchasing trade and consuming public through wide advertising by it in medical and dental journals, and other like media; and thereafter a business, consisting, as originally organized of two partners, and eventually carried on by one of said individuals, and organized to manufacture, sell, and distribute accounting systems especially designed for physicians and dentists, and patterned as closely in every detail as possible on aforesaid well known system, with which one of said partners was familiar by virtue of prior employment with corporate proprietor thereof, hereinabove referred to—

Copied in every detail aforesaid system, including forms for operation thereof, sample equipment for use in selling same and materials generally, from samples and forms obtained by said former employee from system itself, and placed on the market, after so copying and patterning the other, a system of professional accounting for doctors and dentists, which was its exact copy, and copied said other company's sales promotional literature, and also the desks and cabinets which housed its system, as to size, shape, arrangement and general appearance, and offered and sold its said system in substantial competition with said corporation first named, to physicians and dentists in cities, towns, and communities throughout the United States;

With result of unfairly diverting trade from said corporation to it, and of securing for it an undue advantage over competitors by appropriating the result of said corporation's research, ingenuity, labor, and expenditures, and with capacity and tendency to mislead and deceive the purchasing public into erroneous belief that in buying its professional accounting system they were purchasing the well known McCaskey System, and of causing them to buy same on account of such erroneous belief, thus engendered; to the substantial injury of competition in commerce:

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

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Before *Mr. Robert S. Hall*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Albert R. Hoffman, of Cincinnati, Ohio, 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 John H. Meyer, trading as Med-Dental Systems 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, John H. Meyer, is an individual trading under the name and style of Med-Dental Systems Company, with his principal office and place of business located at 1015 Schmidt Building, Cincinnati, Ohio, and is now, and has been for more than two years last past, engaged in the business of selling and distributing to members of the purchasing public in commerce, as herein set out, professional accounting systems.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said accounting systems, when sold by him, to be transported from his office and principal place of business in the State of Ohio and from points in the State of Indiana, to purchasers thereof located in the various States of the United States other than the States of Ohio and Indiana, and in the District of Columbia. There is now, and has been at all times since the respondent has been in business as aforesaid, a constant current of trade and commerce in said accounting systems so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his business, is now and has been at all times mentioned herein, engaged in substantial competition with other individuals and with corporations, firms, and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the sale and distribution of similar professional accounting systems.

PAR. 4. The McCaskey Register Company is a corporation organized, existing, and doing business under and by virtue of the State of Ohio, with its principal office and place of business located at Alli-

ance, in that State. It is now, and has been continuously since the year 1909 engaged in the manufacture of professional accounting systems, including desks, cabinets, books, and records specially designed for use by physicians and dentists as an accounting system, and in the sale and distribution of said products in commerce between and among the various States of the United States, and causes said professional accounting systems, forms, and records, when sold by it, to be transported from its office and principal place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. In the sale and distribution of said products, the said McCaskey Register Company is in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

The professional accounting system sold and distributed by the McCaskey Register Company is designed to carry the current or active accounts of the doctor or dentist, unpaid accounts, and includes forms for carrying information concerning the physical condition of each patient, together with the status of the patient's account, and a case history of such patient. In addition thereto, the said McCaskey Register Company has developed for use by the doctor or dentist certain other forms pertaining to the services rendered the patient by the doctor or dentist. The professional accounting system of the McCaskey Register Company has certain distinct features which are as follows:

"one writing", "three relationship", "visibility", "pocketbook",
"monthly account book", "announcement" and "collection system".

All of these features are well and favorably known to the members of the medical and dental professions and are, by such members, considered unique parts of the "McCaskey System", to such an extent that when such features are observed in any professional accounting system they are identified and considered as features of the "McCaskey System" and that such system is a McCaskey professional accounting system.

The forms and charts used in accomplishing the purposes for which the "McCaskey System" is designed have been in use since the year 1909. The "McCaskey System" of professional accounting for doctors and dentists, which has been manufactured and sold as aforesaid since the year 1909, is the result of a great amount of time, labor research, and expenditure of money, and is a singularly unique system. During all of the time since the creation of the "McCaskey

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System", it has been widely advertised by the McCaskey Register Company, both by description and illustrations in medical and dental journals, magazines, newspapers, and other like advertising media, to such an extent that it has become, and now is, well and favorably known to the trade and consuming public as the "McCaskey System".

PAR. 5. The business conducted under the name Med-Dental Systems Company was originally organized in the month of October 1934 as a copartnership composed of respondent, John H. Meyer, and one Victor T. Griswold. It was organized to manufacture, sell, and distribute accounting and bookkeeping systems especially designed for physicians and dentists. The partnership was dissolved in May 1935 since which date the company has been exclusively operated by respondent, John H. Meyer. The purpose of establishing Med-Dental Systems Company was to manufacture and sell in commerce, as aforesaid, a professional accounting system patterned as closely in every detail as possible from the well-known "McCaskey System". Victor T. Griswold, prior to the organization of the respondent company, was in the employ of the McCaskey Register Company. In the course of his employment with McCaskey Register Company, Griswold became familiar with the forms and system of McCaskey. After the formation of Med-Dental Systems Company, from samples and forms obtained by Griswold from the McCaskey Register Company's system, the Med-Dental System copied in every detail the "McCaskey System", including the forms for the operation of the system, sample equipment for use in selling the system and materials generally. After so copying and patterning the well known "McCaskey System", the respondent placed on the market and sold and still sells and distributes in commerce, as aforesaid, a system of professional accounting for doctors and dentists which is an exact copy of the well-known "McCaskey System". Moreover, the respondent likewise copied the sale promotional literature of the McCaskey Register Company. The desks and cabinets of the respondent, which house the system of accounting, have been copied in size, shape, arrangement and general appearance from the "McCaskey System", and are sold and distributed as herein set out.

Respondent offers to sell and sells his accounting system, hereinabove described, to physicians and dentists in cities, towns, and communities throughout the United States and comes in substantial competition with McCaskey Register Company in such offers and sales.

PAR. 6. The identity of design and plan of respondent's professional accounting system with the "McCaskey System" of the McCaskey Register Company has the capacity and tendency to unfairly divert, and has resulted in unfairly diverting, trade from the McCaskey

Register Company to the respondent, and the practices of respondent in constructing its accounting system of the same design and plan as that of the McCaskey Register Company has had the effect of securing, and does secure, for respondent an undue advantage over competitors by appropriating the results of the McCaskey Register Company's research, ingenuity, labor, and expenditures. The acts and practices of respondent, in appropriating to himself the identical features of the "McCaskey System" in the sale and distribution thereof, as aforesaid, have the capacity and tendency to confuse, mislead, and deceive the consuming public into the erroneous belief that when purchasing respondent's professional accounting system they are purchasing the well-known "McCaskey System", and to cause them to purchase said professional accounting system of respondent on account of such erroneous belief engendered. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of respondent, as above set forth, are all to the prejudice of the public and to respondent's competitors and constitute unfair methods of competition in 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 8th day of May 1936, issued and served its complaint in this proceeding upon respondent, John H. Meyer, trading as Med-Dental Systems Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent did not file answer) testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Robert S. Hall an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Albert R. Hoffman, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and

brief in support of the complaint (respondent did not file brief), the oral arguments of the counsel as aforesaid having been waived, and the Commission having duly considered the same, and being now 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 John H. Meyer, is an individual formerly trading under the name and style of Med-Dental Systems Company, with his principal office and place of business located at Cincinnati, Ohio. For several months prior to January 1, 1936, respondent was engaged in the business of selling and distributing to members of the purchasing public in commerce, as herein set out, professional accounting systems.

PAR. 2. The respondent, being engaged in business as aforesaid, caused said accounting systems, when sold by him, to be transported from his office and principal place of business in the State of Ohio and from points in the State of Indiana, to purchasers thereof located in the various States of the United States other than the States of Ohio and Indiana. During all the time respondent was engaged in business, as aforesaid, there was a constant current of trade and commerce in said accounting systems so distributed and sold by the respondent, between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his business, was engaged in substantial competition with other individuals and with corporations, firms and partnerships engaged in commerce between and among the various States of the United States in the sale and distribution of similar professional accounting systems.

PAR. 4. The McCaskey Register Company is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at Alliance, in said State. It is now, and has been continuously since the year 1909, engaged in the manufacture of professional accounting systems, including desks, cabinets, books, and records specially designed for use by physicians and dentists as an accounting system, and in the sale and distribution of said products in commerce between and among the various States of the United States, and causes said professional accounting systems, forms and records, when sold by it, to be transported from its office and principal place of business in the State of Ohio to purchasers thereof located in the various States

of the United States other than the State of Ohio. In the sale and distribution of said products, the said McCaskey Register Company is in substantial competition with other corporations and with individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The professional accounting system sold and distributed by McCaskey Register Company is designed to carry the current or active accounts of the doctor or dentist, unpaid accounts, and includes forms for carrying information concerning the physical condition of each patient, together with the status of the patient's account, and the case history of such patient. The professional accounting system of the McCaskey Register Company has certain distinct features, which are as follows:

"one writing", "three relationship", "visibility", "pocketbook",
"monthly account book", "Collection system".

All of these features are well and favorably known to members of the medical and dental professions and are, by such members, considered unique parts of the "McCaskey System", and to such an extent that when such features are observed in any professional accounting system they are identified and considered as features of the "McCaskey System".

The forms and charts used in accomplishing the purposes, for which the "McCaskey System" is designed, have been in use since the year 1909. The "McCaskey System" of professional accounting for doctors and dentists, which has been manufactured and sold as aforesaid since the year 1909, is the result of a great amount of time, labor, research, and expenditure of money, and is a unique system. Since the creation of the "McCaskey System" it has been widely advertised by the McCaskey Register Company, both by description and illustration in medical and dental journals, magazines, newspapers, and other like advertising media, and to such an extent that it has become, and now is, well and favorably known to the purchasing trade and consuming public as the "McCaskey System".

PAR. 5. The business conducted under the name Med-Dental Systems Company was originally, organized during the month of October 1934, as a copartnership composed of respondent, John H. Meyer, and one Victor T. Griswold. It was organized to manufacture, sell, and distribute accounting systems especially designed for physicians and dentists. The partnership was dissolved in May 1935, and from that date until on or about January 1, 1936, the business of Med-Dental Systems Company was exclusively operated by respondent, John H. Meyer. On or about January 1, 1936, the

respondent, John H. Meyer, sold his stock and trade, including desks, cabinets, and records, and since that date has not engaged in such business. The purpose of establishing Med-Dental Systems Company was to manufacture and sell in commerce, as aforesaid, a professional accounting system patterned as closely in every detail as possible from the well-known "McCaskey System". Victor T. Griswold, prior to the organization of the respondent company, was in the employ of the McCaskey Register Company, and in the course of said employment the said Griswold became familiar with the forms and system generally of the "McCaskey System" of the McCaskey Register Company. After the formation of Med-Dental Systems Company, from samples and forms obtained by Griswold from the McCaskey Register Company's system, the Med-Dental Systems Company, composed of the respondent and said Griswold, copied in every detail the "McCaskey System", including the forms for the operation of the system, sample equipment for use in selling the system and materials generally. After so copying and patterning the "McCaskey System" the respondent placed on the market and sold, until on or about January 1, 1936, in commerce, as aforesaid, a system of professional accounting for doctors and dentists, which was an exact copy of the well-known "McCaskey System". Moreover, the respondent likewise copied the sales promotional literature of the McCaskey Register Company. The desks and cabinets of the respondent, which house the system of accounting, were copied in size, shape, arrangement and general appearance from the "McCaskey System", and were sold and distributed as herein set out.

Respondent offered to sell and sold his accounting system to physicians and dentists in cities, towns and communities throughout the United States, and came in substantial competition with McCaskey Register Company in such offers and sales.

PAR. 6. The identity of design and plan of respondent's professional accounting system with the "McCaskey System" of the McCaskey Register Company had the capacity and tendency to unfairly divert, and did result in unfairly diverting trade from the McCaskey Register Company to the respondent. The practices of respondent in constructing its system of the same design and plan of the McCaskey Register Company had the effect of securing and did secure for respondent an undue advantage over his competitors by appropriating the results of the McCaskey Company's research, ingenuity, labor, and expenditures. The aforesaid acts of respondent had the capacity and tendency to mislead and deceive the purchasing public

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into the erroneous belief that when purchasing respondent's professional accounting system they were purchasing the well-known "McCaskey System", and too caused them to purchase said accounting system of respondent on account of such erroneous belief engendered as set forth. As a result thereof, substantial injury was done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, John H. Meyer trading as Med-Dental Systems Company, 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, 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, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of the Commission filed herein (respondent having filed no brief and not having requested oral argument), 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, John H. Meyers trading as Med-Dental Systems Company, or trading under any other name, his agents, representatives, servants, and employees in connection with the offering for sale, sale, and distribution of professional accounting systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using blank forms, cards, indexes, sales kits or other materials so simulating in appearance, the blank forms, cards, indexes or other materials of McCaskey Register Company, or of any other competitor or competitors as to have, or which may have, the capacity or tendency to deceive the purchasing public into the belief that such blank

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forms, cards, indexes, sales kits or other materials, or the accounting systems of which they are a part, are the blank forms, cards, indexes, sales kits or other materials or system of McCaskey Register Company or of said other competitor or competitors of respondent.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF
QUALITY PRODUCTS 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 2347. Complaint, Sept. 10, 1936¹—Decision, Oct. 19, 1936

Where a corporation, engaged in the manufacture, distribution, and sale of a line of cosmetics, including sets of creams and cleansers designated by it as "Hormonique Glandular Skin Treatment," consisting of the "Hormonique Liquid Skin Cleanser," "Hormonique Finishing Cream," and "Unguent Hormonique"; in advertising said treatment in newspapers and periodicals of general circulation throughout the United States, and by means of advertising folders and literature circulated to its customers and prospective customers—

Falsefully represented that such treatment would penetrate and nourish the skin, so that crows' feet and wrinkles would disappear, and that such penetration would give new vigor and elasticity to sagging muscles and eliminate old-looking chin and neck lines, thereby giving the face youthful contour, and that it would reactivate countless tiny glands underneath the skin's surface and banish blackheads, whiteheads, and enlarged pores, through such statements as: "When wrinkles, crows' feet, and sagging muscles appear, it is a sign that the glands are not functioning properly. * * * In order to effect a true correction of the condition, the Hormone Producing Gland must be stimulated back into action. It is with pride, therefore, that we announce that this truly amazing result has been accomplished by the new discovery—'Unguent Hormonique.' * * * Contains the essence of genuine gland secretions—Hormones, Dermine, and Vitamins * * * carefully selected for their ability to stimulate your own skin glands to supply the skin with the natural nourishment it needs to make it velvety smooth, etc. * * * The vital gland substances in this product are completely absorbed by the skin. These essentials awaken and reactivate those countless tiny glands underneath the skin surface," etc.;

The facts being that the said treatment would not penetrate the skin with the result that it would be nourished, crows' feet and wrinkles disappear, etc., reactivate Hormone producing glands, or reactivate countless tiny glands underneath the skin surface, etc., and said various representations made by it with respect to the nature and effect of its product when used were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with the result that a number of the consuming public purchased a substantial volume of its said product, and trade was unfairly diverted to it from those likewise engaged in the sale of cosmetics who truthfully advertise their products; to the substantial injury of competition in commerce:

¹ Amended and supplemental.

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

Mr. George Foulkes for the Commission.

Kenyon & Kenyon, of New York City, for respondent.

AMENDED AND SUPPLEMENTAL 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 Quality Products 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 the 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, Quality Products Company, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 382 Jefferson Street, Brooklyn, N. Y. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, a line of cosmetics.

PAR. 2. Said respondent being engaged in business as aforesaid causes said cosmetics when sold to be transported from its office and place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which such shipments were made. Respondent now maintains a constant current of trade in commerce in said cosmetics, manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin in commerce among and between the various States of the United States and in the District of Columbia. Among the cosmetics manufactured by respondent are included sets of creams and cleansers designated by respondent as "Hormonique Glandular Skin Treatment," each set consisting of so-called "Hormonique Liquid Skin Cleanser," "Hormonique Finishing Cream" and "Unguent Hormonique," the latter being the essential cream of the said treatment.

In the course and operation of its business and for the purpose of inducing individuals to purchase "Hormonique Glandular Skin Treatment" respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Respondent represented, and now represents that said "Hormonique Glandular Skin Treatment" possesses properties and ingredients of such character as to stimulate into action the "Hormone Producing Glands", and that "Unguent Hormonique" when applied externally to the skin will be absorbed by, or penetrate, nourish, and stimulate the skin, and thereby cause crows' feet to disappear, or cause sagging muscles to take on new vigor and elasticity. Certain advertising matter used by the respondent in making said representations is herein set out as illustrative of said representations, but is not all inclusive. Such advertisements are as follows:

* * * The normal healthy skin is like that crystal clear pool of water, lovely and inviting, because it is constantly being fed such vital elements called "hormones" from the thousands and thousands of tiny glands that lie under the skin. As long as these glands supply their wonderful secretions to the skin, that youthful firmness and unblemished texture is maintained.

When wrinkles, crows' feet, and sagging muscles appear, it is a sign that the glands are not functioning properly. The condition is one that cannot be helped by an ordinary "facial" or by anything that is merely external in its action. In order to effect a true correction of the condition, the Hormone Producing Gland must be stimulated back into action.—It is with pride, therefore, that we announce that this truly amazing result has been accomplished by the new discovery of science—"Unguent Hormonique."

So this scientist finally discovered that these skin glands send their health-giving hormone secretions to the skin. He incorporated these hormones, together with Dermine and Vitamins in an Unguent and tried it on a group of women. The results exceeded his expectations.

Crows' feet and wrinkles disappear as if by magic because the glands were sending nourishment to the skin cells and consequently their condition improved. Muscles that were sagging and giving women that old-looking chin and neck-line, took on new vigor and elasticity and gained the strength to hold the skin in a firm, youthful contour. Facial blemishes, such as blackheads, whiteheads, and enlarged pores were quickly banished because the reactivated skin organs had the vigor to throw off impurities just as a healthy body resists disease.

Unguent Hormonique contains the essence of genuine gland secretions—Hormones, Dermine, and Vitamins. They have been carefully selected for their ability to stimulate your own skin glands to supply the skin with the natural nourishment it needs to make it velvety smooth, crystal clear, and youthfully firm.

UNGUENT HORMONIQUE. The vital gland substances in this product are completely absorbed by the skin. These essentials awaken and re-activate those

countless tiny glands underneath the skin surface, and should they produce a tingling sensation, it will soon be replaced by a refreshed stimulated feeling, arousing in the skin increased vitality.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that,

(1) Its product will penetrate the skin, with the result that the skin will be nourished, and that crows' feet and wrinkles will disappear; or that such penetration will give new vigor and elasticity to sagging muscles, or eliminate old-looking chin and neck lines, thereby giving the face youthful contour; or that such penetration will reactivate countless tiny glands underneath the skin's surface, or banish blackheads, whiteheads, and enlarged pores.

(2) Its product will stimulate into action the "Hormone Producing Glands";

(3) Its product will nourish the skin as well as cause crows' feet and wrinkles to disappear;

(4) Its product will give new vigor and elasticity to sagging muscles and eliminate old-looking chin and neck-lines, thereby giving the face a youthful contour;

(5) Its product will banish blackheads, whiteheads, and enlarged pores;

(6) Its product will penetrate the skin and re-activate the skin organs.

(7) Its product will be completely absorbed by the skin and re-activate countless tiny glands underneath the skin surface.

PAR. 4. The representations made by respondent with respect to the nature and effect of its product when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said "Hormonique Glandular Skin Treatment" does not penetrate the skin with the result that the skin will be nourished, and that crows' feet and wrinkles will disappear; nor will such penetration give new vigor and elasticity to sagging muscles or eliminate old looking chin and neck lines, thereby giving the face youthful contour; nor will such penetration re-activate countless tiny glands underneath the skin's surface or banish blackheads, whiteheads, or enlarged pores. Said product will not nourish the skin and cause crows' feet and wrinkles to disappear; nor will it give new vigor and elasticity to sagging muscles, nor will said product eliminate old looking chin and neck lines thereby giving the face a youthful contour. Said product will not re-activate hormone producing glands or re-activate countless tiny glands underneath the skin's surface. Said product will not banish blackheads, whiteheads, and enlarged pores.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent, as hereinabove set forth, in his advertising in newspapers, magazines, pamphlets, and other advertising literature in offering for sale, and selling, his product, had, and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling cosmetics, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 September 11, 1936, issued and served its complaint in this proceeding upon respondent, Quality Products Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 23, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the

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Commission having duly considered the same, and being now 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, Quality Products Company, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 382 Jefferson Street, Brooklyn, N. Y.

Quality Products Company, Inc., is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, a line of cosmetics.

PAR. 2. In the operation of its business respondent caused said cosmetics when sold to be transported from its office and place of business in the State of New York to purchasers thereof at various points in States of the United States other than the State from which such shipments were made.

Respondent now maintains a constant current of trade in commerce in said cosmetics, manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the operation of its business, respondent is now and has been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin, among and between the various States of the United States and in the District of Columbia.

Among the line of cosmetics manufactured by respondent are included sets of creams and cleansers designated by respondent as "Hormonique Glandular Skin Treatment," each set consisting of so-called "Hormonique Liquid Skin Cleanser," "Hormonique Finishing Cream," and "Unguent Hormonique," the latter being the essential cream of the said treatment.

In the course of the operation of its business and for the purpose of inducing individuals to purchase "Hormonique Glandular Skin Treatment" respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and literature.

Respondent represented, and now represents that said "Hormonique Glandular Skin Treatment" possesses properties and ingredients of

such character as to stimulate into action the "Hormone Producing Glands," and that "Unguent Hormonique" when applied externally to the skin will be absorbed by, or penetrate, nourish, and stimulate the skin, and thereby cause crows' feet to disappear, or cause sagging muscles to take on new vigor and elasticity.

Certain advertising matter used by the respondent in making said representations is herein set out as illustrative of said representations, but is not all inclusive. Such advertisements are as follows:

* * * The normal healthy skin is like that crystal clear pool of water, lovely and inviting, because it is constantly being fed such vital elements called "hormones" from the thousands and thousands of tiny glands that lie under the skin. As long as these glands supply their wonderful secretions to the skin, that youthful firmness and unblemished texture is maintained.

When wrinkles, crows' feet, and sagging muscles appear, it is a sign that the glands are not functioning properly. The condition is one that cannot be helped by an ordinary "facial" or by anything that is merely external in its action. In order to effect a true correction of the condition, the Hormone Producing Gland must be stimulated back into action.—It is with pride, therefore, that we announce that this truly amazing result has been accomplished by the new discovery of science—"Unguent Hormonique".

So this scientist finally discovered that these skin glands send their health-giving hormone secretions to the skin. He incorporated these hormones, together with Dermine, and Vitamine in an Unguent and tried it on a group of women. The results exceeded his expectations.

Crows' feet and wrinkles disappear as if by magic because the glands were sending nourishment to the skin cells and consequently their condition improved. Muscles that were sagging and giving women that old-looking chin and neck-line, took on new vigor and elasticity and gained the strength to hold the skin in a firm, youthful contour. Facial blemishes, such as blackheads, whiteheads, and enlarged pores were quickly banished because the reactivated skin organs had the vigor to throw off impurities just as a healthy body resists disease.

Unguent Hormonique contains the essence of genuine gland secretions—Hormones, Dermine, and Vitamine. They have been carefully selected for their ability to stimulate your own skin glands to supply the skin with the natural nourishment it needs to make it velvety smooth, crystal clear, and youthfully firm.

UNGUENT HORMONIQUE. The vital gland substances in this product are completely absorbed by the skin. These essentials awaken and re-activate those countless tiny glands underneath the skin surface, and should they produce a tingling sensation, it will soon be replaced by a refreshing stimulated feeling, arousing in the skin increased vitality.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that,

(1) Its product will penetrate the skin, with the result that the skin will be nourished, and that crows' feet and wrinkles will disappear; or that such penetration will give new vigor and elasticity to sagging muscles, or eliminate old-looking chin and neck lines, thereby giving

the face youthful contour; or that such penetration will re-activate countless tiny glands underneath the skin's surface, or banish blackheads, whiteheads, and enlarged pores.

(2) Its product will stimulate into action the "Hormone Producing Glands";

(3) Its product will nourish the skin as well as cause crows' feet and wrinkles to disappear;

(4) Its product will give new vigor and elasticity to sagging muscles and eliminate old-looking chin and neck-lines, thereby giving the face a youthful contour;

(5) Its product will banish blackheads, whiteheads, and enlarged pores;

(6) Its product will penetrate the skin and re-activate the skin organs;

(7) Its product will be completely absorbed by the skin and re-activate countless tiny glands underneath the skin surface.

PAR. 4. The representations made by respondent with respect to the nature and effect of its product when used, are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, said "Hormonique Glandular Skin Treatment" does not penetrate the skin with the result that the skin will be nourished, and that crows' feet and wrinkles will disappear; nor will such penetration give new vigor and elasticity to sagging muscles or eliminate old-looking chin and neck lines, thereby giving the face youthful contour; nor will such penetration re-activate countless tiny glands underneath the skin's surface or banish blackheads, whiteheads, or enlarged pores.

Said product will not nourish the skin and cause crows' feet and wrinkles to disappear; nor will it give new vigor and elasticity to sagging muscles, nor will said product eliminate old-looking chin and neck lines thereby giving the face a youthful contour.

Said product will not re-activate hormone producing glands or re-activate countless tiny glands underneath the skin's surface. Said product will not banish blackheads, whiteheads, and enlarged pores.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent, as hereinabove set forth, in its advertising in newspapers, magazines, pamphlets, and other advertising literature in offering for sale, and selling, its product, had, and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the advertisements and misrepresentations of respondent, as hereinabove

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enumerated, a number of the consuming public purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling cosmetics, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Quality Products Company, Inc., a corporation, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence for other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Quality Products Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the sale or offering for sale in interstate commerce of a line of cosmetics, do forthwith cease and desist from:

Representing, directly or by inference, or through any other means whatever, that,

(1) Its cosmetics will penetrate the skin, with the result that the skin will be nourished, and that crows' feet and wrinkles will disappear; or that such penetration will give new vigor and elasticity to sagging muscles or eliminate old-looking chin and neck lines, there-

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by giving the face youthful contour; or that such penetration will re-activate the hormone producing glands or re-activate countless tiny glands underneath the skin's surface, or banish blackheads, whiteheads, and enlarged pores.

(2) Its cosmetics will nourish the skin, and cause crows' feet and wrinkles to disappear; or will give new vigor and elasticity to sagging muscles; or will eliminate old-looking chin or neck lines, thereby giving the face a youthful contour; or will re-activate hormone producing glands and countless tiny glands underneath the skin's surface; or will banish blackheads, whiteheads and enlarged pores.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF

THE HEWITT SOAP COMPANY, INC., AND THE CROWN SOAP COMPANY, ALSO TRADING UNDER THE NAME OF DAYTON SOAP COMPANY

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

Docket 2897. Complaint, Aug. 13, 1936—Decision, Oct. 19, 1936

Where a corporation and its subsidiary, engaged in the manufacture of a line of toilet and alleged medicated soaps, and soap powders—

(a) Used such designations and descriptive matter on the labels thereof as "Physician's Antiseptic Castile Soap" or "Castile Soap," "Dr. Renner's Medicated Skin Soap," and "Medicinal Cream Castile Soap," and applied such legends to certain of said soaps as "Used by Doctors and Nurses," and designated and described certain other soaps as "Almond Cream," "Almond Cream Castile," and "Lemonized Complexion Soap;"

The facts being that the aforesaid alleged antiseptic or medicinal soaps did not contain requisite ingredients in sufficient strength to warrant such designations, individual referred to was not a physician but a chemist in their employ, and the particular soaps involved were not in any respect physicians' antiseptic soaps, nor specially used by doctors and nurses, and had no medication value and were not medicinal, and so-called "Almond" and "Lemonized" soaps, respectively, contained no almond oil cream made from the fatty sweet almond oil, or enough lemon, if any, to make even the slightest lemon odor, though they, respectively, contained a slight amount of volatile oil of bitter almonds and oil of lemongrass; and

(b) Placed upon the labels or containers of the various soaps thus designated by it, and on other soap products or powders, such designations as "Combination price 75 cents," for 3-cake combination, or "Total exceptional value \$1.00" for "Big Seven Assortment of the Finest Toilet Soaps," as therein specified, or "¼ doz. 75 cents," or "2-cakes-25¢," or "2 cakes 50 cents";

The facts being said soaps and soap powders were never sold or offered for sale at the fictitious and excessive prices marked on the boxes, the soaps listed at prices from "2-cakes-25¢" to a price of 25¢ per cake were sold to their canvassers at from 2¢ to 4½¢ per cake, and were comparable to soaps ordinarily sold at retail at from 2 cakes for 5¢, to 10¢ per cake or 3 cakes for 25¢, powdered soap sold in cartons marked "15¢ size" and in boxes marked "10 cents," were sold to such canvassers at 2¢ or slightly less per package, and were such small boxes as ordinarily sell for not to exceed 5¢, or 3 for 10¢, and said prices generally, thus marked on the boxes in which its products were sold, were many times in excess of the actual selling price to said house-to-house canvassers, and in excess of the actual value thereof, and much greater than actual price at which they were to be sold by such canvassers to ultimate purchasing and using public, and were not intended to be true retail price or value of said products, but to be far in excess of price actually charged ultimate consumer;

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With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that substantial number of consuming public purchased substantial volume of their products, and trade was unfairly diverted to them from those who distribute and sell toilet and medicated soaps which actually have ingredients and qualities claimed by said corporations for their products, and who truthfully advertise and sell same at such higher prices as inclusion therein of their effective ingredients and qualities warrant; to the substantial injury of competitors in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Estabrook, Finn & McKee, of Dayton, Ohio, 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 Hewitt Soap Company, Inc., a corporation, and the Crown Soap Company, a corporation, also trading under the name of Dayton Soap Company, hereinafter referred to as respondents, have been, and are now, 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 Hewitt Soap Company, Inc., is an Ohio corporation, which has its principal office and place of business at 415 Linden Avenue, in the city of Dayton, State of Ohio. Respondent Crown Soap Company is an Ohio corporation, which has its principal office and place of business at 289 Linden Avenue, in the City of Dayton, State of Ohio. Respondent Crown Soap Company also trades under the name of Dayton Soap Company. The respondent Crown Soap Company is a wholly-owned subsidiary of the respondent Hewitt Soap Company, Inc., and the policies and practices of the respondent Crown Soap Company are controlled and directed by the respondent Hewitt Soap Company, Inc., and the said respondents have acted together during all of the times herein mentioned and in doing the acts and things hereinafter alleged. Respondent Hewitt Soap Company, Inc. is now, and for some time has been, engaged in the business of manufacturing a line of toilet and alleged medicated soaps and soap powders and both of said respondents are now, and have been for more

than two years, engaged in the business of selling and distributing said toilet and alleged medicated soaps and soap powders in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said soaps and soap powders, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located at various points in States of the United States other than the State of Ohio and in the District of Columbia. Respondents now maintain a constant current of trade in commerce in said products, manufactured, sold, and distributed by them, as above stated, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations engaged in the business of manufacturing, selling, and distributing toilet and medicated soaps and soap powders of the claimed price, ingredients, quality, and character of respondents' products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of their said soaps and soap powders, respondents have been, and are now, individually engaged in, and have conspired to engage in, misbranding, fictitious price marking, misrepresentation and false and misleading advertising.

Among the acts done and representations made by respondents, individually, and in furtherance of said conspiracy, are the following:

(1) Respondents sell one 3-cake combination called "Crown Cold Cream and Germicidal Soap Combination", consisting of 2 cakes of "Cold Cream" soap and 1 of "Germicidal" soap. The box containing this 3-cake combination is marked "Combination price 75 cents".

(2) Respondents sell a soap called "Crown Lavender Soap—Olde English", in boxes containing 3 cakes, marked "3 cakes for 75 cents".

(3) Respondents sell a combination of 7 cakes in a box called "Big Seven Special Assortment Fine Toilet Soaps", which is also marked "Big Seven Assortment of the Finest Toilet Soaps" and "Seven Unusual Soaps of the Highest Quality", and which consists

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of 1 cake each of the following named soaps, with the price for each stated as indicated:

Cocanut Oil Shampoo Soap-----	\$0.15
Creme De Savon-----	.10
Dr. Renner's Medicinal Foot Soap-----	.25
Evergreen Medicated Soap-----	.15
Beauty Pure Baby Castile-----	.15
Lotus De Ore-----	.10
Lemonized Complexion Soap-----	.10
<hr/>	
Total exceptional value-----	\$1.00

(4) Respondents sell a soap called "Physician's Antiseptic Skin Soap", in boxes containing 3 cakes. These boxes are marked "1/4 doz. 75 cents", "Used by Doctors and Nurses", "An Ideal Medicated Soap".

(5) Respondents sell a soap called "Physician's Antiseptic Castile Soap", in boxes containing 2 cakes. These boxes are marked "2-cakes-25¢", "Used by Doctors and Nurses".

(6) Respondents sell a soap called "Almond Cream Castile—A Mild Soothing Soap", in boxes containing 2 cakes. These boxes are marked "2 cakes 50 cents".

(7) Respondents sell a soap called "Almond Cream Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(8) Respondents sell a soap called "Medical Cream Castile Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(9) Respondents sell a soap called "Dr. Renner's Medicated Skin Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(10) Respondents sell a box of powdered soap called "Ezy-clean Borax'd Compound". This box is marked "15¢ size".

(11) Respondents sell a soap powder called "White Cottage Soap Powder (Boraxated)". The box containing this powder is marked "10 cents".

PAR. 5. The representations made by respondents with respect to the prices, nature, ingredients, and effective qualities of said soaps and soap powders are grossly exaggerated, false, misleading, and untrue. The truth and facts are that said soaps and soap powders are never sold or offered for sale at the excessive prices marked on the boxes; neither are such soaps the fine toilet or medicated soaps which such fictitious high prices and the labels are intended to, and do, claim and imply, but are in fact ordinary, cheap grades of toilet and allegedly medicated soaps without valuable or effective ingredi-

ents or qualities as indicated by their names, with the single exception of the germicidal soap which has some germicidal quality. More specifically, the facts are as follows:

(1) The various soaps labeled at prices from "2-cakes-25¢" to a price of 25¢ per cake are sold to their canvassing sales people at from 2¢ to 4½¢ per cake, and are comparable to soaps ordinarily sold at retail at from 2 cakes for 5¢, to 10¢ per cake or 3 cakes for 25¢.

(2) The soap called "Physician's Antiseptic Skin Soap" contains only one ingredient which might produce an antiseptic action, namely, oil of cassia, and of this ingredient the content is only 0.34 of an ounce in 100 pounds of soap. Such quantity is too minute to produce any antiseptic action. The said soap is not a physician's antiseptic skin soap in any respect nor is it specially used by doctors and nurses. It has no medication value.

(3) The so-called "Physician's Antiseptic Castile Soap" contains three possible antiseptic ingredients, namely, benzyl acetate, oil of cloves and diphenyloxide, but the total of these is approximately 1/8 of an ounce to 100 pounds of soap. Such small quantity of antiseptic ingredients renders the soap negligible as an antiseptic agent. It is not a soap specially used by doctors and nurses.

(4) The so-called "Dr. Renner's Medicated Skin Soap" contains no sufficient amount of medication. Zinc oxide is present to the extent of 1/4 of 1 percent, which can produce no effective antiseptic result. The "Dr. Renner" referred to is not a physician but is a Chemist in the employ of respondents.

(5) The so-called "Medicinal Cream Castile Soap" contains no sufficient amount of medication, although zinc oxide is present to the extent of 3/4 of 1 percent. The use of the term "medicinal" as applied to this soap is without justification.

(6) The soaps called "Almond Cream" and "Almond Cream Castile" have as the fatty base, tallow, and cocoanut oil. There is no oil of sweet almond present. The perfume in these soaps has as one chemical constituent a slight amount of volatile oil of bitter almonds. The bulk of the perfume is not even bitter almond oil. To the ordinary informed purchasing public, the term "almond" in this connection implies almond oil cream which is made from the fatty sweet almond oil.

(7) The soap called "Lemonized Complexion Soap" has in it no lemon, or not enough to make even the slightest lemon odor, but does contain, among the perfume materials, certain oil of lemongrass.

(8) The powdered soap called "Ezy-clean Borax'd Compound", sold in cartons marked "15¢ size", and the soap powder called "White Cottage Soap powder (Boraxated)", sold in boxes marked "10 cents",

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are sold to their door-to-door canvassers at 2¢ or slightly less per package, and are such small boxes such as should ordinarily sell for not to exceed 5¢, or 3 for 10¢.

The said products above mentioned are sold by the respondent principally to house to house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the products above mentioned are sold are many times in excess of the actual selling price to said house to house canvassers and many times in excess of the actual value thereof and are much greater than the actual price at which said products are sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by the respondents to be the true retail price or the true retail value of said products, and are false and fictitious and in no sense represents either the true value or the true selling price of the products so price marked. The prices marked as above indicated were intended by the respondents and the canvasser purchasing for resale to be far in excess of the price actually charged the ultimate consumer.

PAR. 6. There are among respondent's competitors many who distribute and sell similar soaps and soap powders, or soaps which in fact have sufficient of the ingredients and qualities claimed by respondents for their products which justify prices in line with respondents' fictitious prices, who do not in any way misrepresent the prices, ingredients, quality, or character of their respective products.

PAR. 7. Each and all of the false and misleading statements, representations, and implications made by the respondents in pricing, designating and describing their products, and the effectiveness of said products, as hereinabove set out, in their labels and advertising, in the course of distributing their products, were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, labeling and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling toilet and medicated soaps which have the ingredients and qualities claimed by respondents for their products, who truthfully advertise their respective products and sell them at such higher prices as the inclusion therein of the effective ingredients and quality warrant. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in

commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations, actual and implied, of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 13th day of August 1936, issued and served its complaint in this proceeding upon respondents, The Hewitt Soap Company, Inc., and The Crown Soap Company, trading under its own name and under the trade name Dayton Soap Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the eighth day of September, the respondents filed their separate answers in this proceeding. Thereafter a stipulation was entered into (subject to the approval of the Commission) whereby it was stipulated and agreed that a statement of facts signed and executed by the attorneys of record for the several respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Hewitt Soap Company, Inc., is an Ohio corporation, which has its principal office and place of business

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at 415 Linden Avenue, in the city of Dayton, State of Ohio. Respondent The Crown Soap Company is an Ohio corporation, which has its principal office and place of business at 289 Linden Avenue, in the city of Dayton, State of Ohio. Respondent The Crown Soap Company also trades under the name of Dayton Soap Company. The respondent The Crown Soap Company is a wholly-owned subsidiary of the respondent The Hewitt Soap Company, Inc. Both of said respondent corporations are wholly owned and controlled by Procter & Gamble Company. Both of the said respondents have acted together during all of the times herein mentioned and in doing the acts and things hereinafter alleged. Respondent The Hewitt Soap Company, Inc. is now, and for some time has been engaged in the business of manufacturing a line of toilet and alleged medicated soaps and soap powders and both of said respondents are now, and have been for more than two years, engaged in the business of selling and distributing said toilet and alleged medicated soaps and soap powders in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said soaps and soap powders, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located at various points in States of the United States other than the State of Ohio and in the District of Columbia. Respondents now maintain a constant current of trade in commerce in said products, manufactured, distributed, and sold by them, as above stated, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations and with firms and individuals engaged in the business of manufacturing, selling, and distributing toilet and medicated soaps and soap powders of the claimed price, ingredients, quality, and character of respondents' products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of their said soaps and soap powders, respondents have been, and are now, individually engaged in misbranding, fictitious price marking, misrepresentation, and misleading advertising.

Among the acts done and representations made by respondents, individually, and in furtherance of their conduct hereinbefore described, are the following:

Findings

(1) Respondents sell one 3-cake combination called "Crown Cold Cream and Germicidal Soap Combination", consisting of 2 cakes of "Cold Cream" soap and 1 of "Germicidal" soap. The box containing this 3-cake combination is marked "Combination price 75 cents."

(2) Respondents sell a soap called "Crown Lavender Soap—Olde English", in boxes containing 3 cakes, marked "3 cakes for 75 cents".

(3) Respondents sell a combination of 7 cakes in a box called "Big Seven Special Assortment Fine Toilet Soaps", which is also marked "Big Seven Assortment of the Finest Toilet Soaps" and "Seven Unusual Soaps of the Highest Quality", and which consists of 1 cake each of the following named soaps, with the price for each stated as indicated:

Cocanut Oil Shampoo Soap-----	\$0.15
Creme De Savon-----	.10
Dr. Renner's Medicinal Foot Soap-----	.25
Evergreen Medicated Soap-----	.15
Beauty Pure Baby Castile-----	.15
Lotus De Ore-----	.10
Lemonized Complexion Soap-----	.10

Total Exceptional Value----- 1.00

(4) Respondents sell a soap called "Physician's Antiseptic Skin Soap", in boxes containing 3 cakes. These boxes are marked " $\frac{1}{4}$ doz. 75 cents", "Used by Doctors and Nurses", "An Ideal Medicated Soap".

(5) Respondents sell a soap called "Physician's Antiseptic Castile Soap", in boxes containing 2 cakes. These boxes are marked "2-cakes-25¢", "Used by Doctors and Nurses."

(6) Respondents sell a soap called "Almond Cream Castile—A Mild Soothing Soap", in boxes containing 2 cakes. These boxes are marked "2 cakes 50 cents".

(7) Respondents sell a soap called "Almond Cream Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(8) Respondents sell a soap called "Medicinal Cream Castile Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(9) Respondents sell a soap called "Dr. Renner's Medicated Skin Soap", in boxes containing 3 cakes. These boxes are marked "3 cakes 50 cents".

(10) Respondents sell a box of powdered soap called "Ezy-clean Borax'd Compound". This box is marked "15¢ size".

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(11) Respondents sell a soap powder called "White Cottage Soap Powder (Boraxated)". The box containing this powder is marked "10 cents".

PAR. 5. The representations made by respondents with respect to the prices, nature, ingredients, and effective qualities of said soaps and soap powders are grossly exaggerated, false, misleading and untrue. In truth and in fact said soaps and soap powders are never sold or offered for sale at the fictitious and excessive prices marked on the boxes; and such soaps are not the fine toilet or medicated soaps which such fictitious high prices and the labels are intended to, and do, claim and imply, but are in fact ordinary, cheap grades of toilet and allegedly medicated soaps without valuable or effective ingredients or qualities as indicated by their names, with the single exception of the germicidal soap which has some germicidal quality. More specifically, the facts are as follows:

(1) The various soaps labeled at prices from "2-cakes-25¢" to a price of 25¢ per cake are sold to their canvassing sales people at from 2¢ to 4½¢ per cake, and are comparable to soaps ordinarily sold at retail at from 2 cakes for 5¢, to 10¢ per cake or 3 cakes for 25¢.

(2) The soap called "Physician's Antiseptic Skin Soap" contains only one ingredient which might produce an antiseptic action, namely, oil of cassia, and of this ingredient the content is only .34 of an ounce in 100 pounds of soap. Such quantity is too minute to produce any antiseptic action. The said soap is not a physician's antiseptic skin soap in any respect nor is it specially used by doctors and nurses. It has no medication value.

(3) The so-called "Physician's Antiseptic Castile Soap" contains three possible antiseptic ingredients, namely, benzyl acetate, oil of cloves and diphenyloxide, but the total of these is approximately 1/8 of an ounce to 100 pounds of soap. Such small quantity of antiseptic ingredients are negligible and do not make the soap an antiseptic agent. It is not a soap specially used by doctors and nurses.

(4) The so-called "Dr. Renner's Medicated Skin Soap" does not contain a sufficient amount of medication to be of any medicating value. Zinc oxide is present to the extent of 1/4 of 1 percent, which can produce no effective antiseptic result. The "Dr. Renner" referred to is not a physician but is a chemist in the employ of respondents.

(5) The so-called "Medicinal Cream Castile Soap" does not contain a sufficient amount of medication, although zinc oxide is present to the extent of 3/4 of 1 percent. The use of the term "medicinal" as applied to this soap is without justification.

(6) The soaps called "Almond Cream" and "Almond Cream Castile" have as the fatty base, tallow and cocoanut oil. There is no oil

of sweet almond present. The perfume in these soaps has as one chemical constituent a slight amount of volatile oil of bitter almonds. The bulk of the perfume is not even bitter almond oil. To the ordinary informed purchasing public, the term "Almond" in this connection implies almond oil cream which is made from the fatty sweet almond oil.

(7) The soap called "Lemonized Complexion Soap" has in it no lemon, or not enough to make even the slightest lemon odor, but does contain, among the perfume materials, certain oil of lemongrass.

(8) The powdered soap called "Ezy-clean Borax'd Compound," sold in cartons marked "15¢ size", and the soap powder called "White Cottage Soap Powder (Boraxated)", sold in boxes marked "10 cents", are sold to their door-to-door canvassers at 2¢ or slightly less per package, and are such small boxes as ordinarily sell for not to exceed 5¢, or 3 for 10¢.

PAR. 6. The said products above mentioned are sold by the respondents principally to house to house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the products above mentioned are sold are many times in excess of the actual selling price to said house to house canvassers and many times in excess of the actual value thereof and are much greater than the actual price at which said products are sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by the respondents to be the true retail price or the true retail value of said products, and are false and fictitious and in no sense represent either the true value or the true-selling price of the products so price marked. The prices marked as above indicated were intended by the respondents and the canvasser purchasing for resale to be far in excess of the price actually charged the ultimate consumer.

PAR. 7. There are among respondents' competitors many who distribute and sell similar soaps and soap powders, or soaps which in fact have sufficient of the ingredients and qualities claimed by respondents for their products which justify prices in line with respondents' fictitious prices, who do not in any way misrepresent the prices, ingredients, quality or character of their respective products.

PAR. 8. Each and all of the false and misleading statements, representations and implications made by the respondents in pricing, designating, and describing their products, and the effectiveness of said products, as hereinabove set out, in their labels and advertising, in the course of distributing their products, were and are calculated to, and had, and now have, a tendency and capacity to mislead and

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deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

PAR. 9. As a true consequence of the mistaken and erroneous beliefs induced by the acts, and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling toilet and medicated soaps which have the ingredients and qualities claimed by respondents for their products, who truthfully advertise their respective products and sell them at such higher prices as the inclusion therein of the effective ingredients and quality warrant. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents and the agreed stipulation of facts entered into between the attorneys of record for the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and the Commission having made its findings as to the facts and conclusion that said 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 ordered, That the respondents, The Hewitt Soap Company, Inc., and The Crown Soap Company, trading under its own name

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and under the trade name Dayton Soap Company, their officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of soap and soap products in interstate commerce or in the District of Columbia, through any corporate or other device, do forthwith cease and desist from representing directly or indirectly:

(1) By fictitious or exaggerated price markings and labels, or in any other manner, that their soaps and soap products have values in excess of their actual values, or in excess of the prices at which they are ordinarily sold or offered for sale;

(2) that their soaps and soap products have medicinal or germicidal properties or content which they do not in fact possess, or do not have in sufficient quantities to make them effective as represented;

(3) that their soaps are especially for physicians' or nurses' use, or are "medicinal," or "medicated," or are made according to a doctor's formula, when such are not the facts.

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

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IN THE MATTER OF

HELMCO, INC.

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

Docket 2928. Complaint, Sept. 22, 1936—Decision, Oct. 19, 1936

Where a corporation engaged for a number of years past in the manufacture and sale of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients used in making candy and soda fountain drinks, and in the advertisement and sale thereof under the trade name "Lacy Hot Cups," and said cups had become widely and favorably known to the drug trade under such name, and members of said trade had, through long usage and over a long period of time, identified such products bearing the name "Lacy" as being those of the well and favorably known "Lacy Products Corporation," advertised, as hereinabove set forth, both by it and by its predecessor under said name; and thereafter a second manufacturer engaged in the sale of such products similar to those made and sold by the aforesaid corporation, and the corporate name of which included the word "Lacy,"—

Made use of its said corporate and trade name, including said word, in advertisements issued, published, and circulated by it to the general public through various periodicals and publications and in other forms of printed matter, and included its said corporate and trade name and the word "Lacy" thereby on its products, as well as in all of its said advertising literature, in sale of its said products in competition with many other distributors of like and similar articles or products who truthfully advertise and represent the origin and manufacture thereof, and do not simulate those of their competitors, or advertise and represent the same in such a way as to deceive and mislead purchasers into the erroneous and mistaken belief that their said products are those of their competitors;

With capacity and tendency to mislead purchasers and prospective purchasers of said products into the erroneous and mistaken belief that the products made and sold by said manufacturer were those of the aforesaid corporation first named herein, notwithstanding fact said competitor manufacturer was not in any way affiliated therewith, and with the result that a substantial number of the purchasing public, on account of the erroneous and mistaken beliefs thus induced, bought the said products of such manufacturer, and trade was unfairly diverted to it from said corporation, and from other competitors who do not engage in similar practices; to the substantial injury of competition in commerce:

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

Mr. J. T. Welch for the Commission.

Mr. Paul G. Ceaser, 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 Com-

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mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Helmco, Inc., formerly the H. E. Lacy Manufacturing 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, 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, Helmco, Inc., formerly the H. E. Lacy Manufacturing Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at 844 West Jackson Boulevard, in the city of Chicago, in the State of Illinois. Respondent for more than one year last past has been and still is engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate syrup and other ingredients for use in manufacturing candy and soda fountain drinks, and in offering said products for sale, and selling the same, in commerce between the State of Illinois and the several States of the United States other than the State of Illinois and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture of like and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. Among the competitors of the respondent is Lacy Products Corporation, a corporation, having its principal office and place of business located at 15 Aberdeen Street, in the city of Chicago, in the State of Illinois. For more than five years last past it has been engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients for use in manufacturing candy and soda fountain drinks. It causes and has caused its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business, Lacy Products Corporation is and has been in competition with other

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corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products. Said Lacy Products Corporation, as well as its predecessor, Lacy Manufacturing Company, advertised and sold, and still advertises and sells, its said products under the trade name of "Lacy Hot Cups" under which name or designation said cups have become widely and favorably known to the drug trade. Said members of the drug trade have, through long usage and over a long period of time, identified electric "fudge warmers" and "hot cups" for heating of chocolate and other ingredients in making soda fountain drinks, which bear the name "Lacy" as being products of the well and favorably known Lacy Products Corporation.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and selling its electric "fudge warmers" and "hot cups", which are similar to those manufactured and sold by Lacy Products Corporation, and for the purpose of creating a demand upon the part of the consuming public for its products, has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter in which it has used and featured its adopted corporate and trade name, namely "H. E. Lacy Manufacturing Company", thus including the word "Lacy".

PAR. 4. The statements and representations of the respondent set forth in paragraph 3 hereof, in connection with the manufacture and sale of its "fudge warmers" and "hot cups", have the capacity and tendency to mislead purchasers and prospective purchasers of respondent's products into the erroneous and mistaken beliefs that its said products were and are the products of the Lacy Products Corporation mentioned in paragraph 2 hereof. In truth and in fact, the respondent is a competitor of the Lacy Products Corporation, and not in any way affiliated with said Lacy Products Corporation.

PAR. 5. There are among the competitors of the respondent in interstate commerce manufacturers, distributors, and sellers of like and similar products who truthfully advertise and represent the origin and manufacture of their respective products, and do not simulate the products of their competitors, and who do not advertise and represent their products in such a way as to deceive and mislead purchasers and prospective purchasers into the erroneous and mistaken beliefs that said products are other than their own.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and

prospective purchasers into the erroneous beliefs described here and into the purchase of respondent's products in such beliefs. Thereby trade is unfairly diverted to respondent from the Lacy Products Corporation, aforesaid, and from other competitors of the respondent in interstate commerce referred to in paragraph 5 and as a consequence thereof, substantial injury is done by respondent to competition in interstate commerce.

PAR. 7. Said 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, on September 22, 1936, issued and served its complaint in this proceeding upon respondent, Helmco, Inc., formerly the H. E. Lacy Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 1, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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, Helmco, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Its office and principal place of business is located at 844 West Jackson Boulevard, in the city of Chicago, State

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of Illinois. Said respondent was formerly incorporated under the name H. E. Lacy Manufacturing Company. For more than one year last past, it has been, and still is, engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate syrup and other ingredients for use in making candy and soda fountain drinks, and in the sale and distribution of said products in commerce between the State of Illinois and the various States of the United States other than the State of Illinois. Respondent has at all times mentioned herein maintained a constant current of trade in said products so manufactured and sold by it, in commerce among and between the various States of the United States. Respondent has also been in substantial competition with other corporations and with individuals, and partnerships engaged in the manufacture of like and similar products and in the sale thereof, in commerce among and between the various States of the United States.

PAR. 2. Among the competitors of the respondent is Lacy Products Corporation, a corporation having its principal office and place of business located at 15 Aberdeen Street, in the city of Chicago, State of Illinois. For more than five years last past, it has been engaged in the manufacture of electric "fudge warmers" and "hot cups" for the heating of liquid mixtures of chocolate and other ingredients used in making candy and soda fountain drinks. It causes its products, when sold, to be shipped from its place of business in the State of Illinois to the purchasers thereof located at points in States of the United States other than the State of Illinois. In the course and conduct of its business, it has been in competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of similar products, in commerce among and between the various States of the United States. Said Lacy Products Corporation, as well as its predecessor, Lacy Manufacturing Company, advertised and sold, and now advertises and sells, its said products under the trade name of "Lacy Hot Cups." Said cups have become widely and favorably known to the drug trade under this name. Members of the drug trade have, through long usage and over a long period of time, identified electric "fudge warmers" and "hot cups" for heating chocolate and other ingredients in making soda fountain drinks, which bear the name "Lacy" as being products of the well and favorably known Lacy Products Corporation.

PAR. 3. The respondent, Helmeo, Inc., in soliciting the sale of and in selling its electric "fudge warmers" and "hot cups" which are similar to those manufactured and sold by Lacy Products Corpora-

tion and for the purpose of creating a demand upon the part of the consuming public for its products, has caused advertisements to be issued, published and circulated to the general public through various periodicals and publications and in other forms of printed matter. In all of said advertising literature, as well as on the various products themselves, respondent has used its corporate and trade name "H. E. Lacy Manufacturing Company", which includes the word "Lacy."

PAR. 4. The acts and practices of the respondent herein detailed, in connection with the manufacture and sale of its "fudge warmer" and "hot cups", in designating and marking said products with the name "Lacy", have the capacity and tendency to mislead purchasers and prospective purchasers of such products into the erroneous and mistaken beliefs that the products manufactured and sold by the respondent were and are products of the Lacey Products Corporation. In truth and in fact, the respondent is a competitor of the Lacy Products Corporation and is not, in any way, affiliated with said Lacy Products Corporation.

PAR. 5. There are among the competitors of the respondent many distributors of like and similar products who truthfully advertise and represent the origin and manufacture of their respective products and who do not simulate the products of their competitors or advertise and represent their products in such a way as to deceive and mislead purchasers into the erroneous and mistaken belief that said products are those of their competitors when they are actually their own products.

As a result of the erroneous and mistaken beliefs, induced as aforesaid, a substantial number of the purchasing public have bought respondent's products. As a result thereof, trade is unfairly diverted to the respondent from the Lacy Products Corporation and from other competitors of the respondent who do not engage in similar practices. As a consequence thereof, substantial injury is done by respondent to competition, in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Helmco, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Helmco, Inc., formerly H. E. Lacy Manufacturing Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of electric "fudge warmers" and "hot cups" in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the word "Lacy" to describe its said products or as part of its trade or corporate name, or through any other means, that its products are those made and distributed by Lacy Products Corporation, or that it is connected or affiliated with Lacy Products Corporation,
2. Imprinting or lettering, or by any means, instrumentality or device placing on its products the word "Lacy".

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF

G. FRED STAYTON AND THE BETTY WHITE CORPORATION

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

Docket 2856. Complaint, June 29, 1936—Decision, Oct. 20, 1936

Where a corporation and an individual, president thereof and theretofore similarly occupied as president of two similarly engaged preceding corporations prior to their respective dissolution, engaged in distribution and sale of a line of toilet preparations, cosmetics, and beauty preparations, consisting of some twenty-nine different items and sold under the name of "Betty White" products, and likewise engaged, in connection with the conduct of such business, in conducting and advertising prize contests in various papers and magazines of general circulation throughout the several States, directed to promoting the sale of such preparations—

- (a) Represented, in their so-called contact advertising describing said contests, in the form, generally, of full-page advertisements on the back cover page or inside back cover page of papers and magazines of general circulation, in many cases, among the several States, that a person solving a problem or puzzle there presented and sending in solution, would, without being required to make any other substantial effort, be given a prize or award, and that the mere mailing of a correct solution would be sufficient to win a prize, and that a contestant in such puzzle or problem contest was not required to pay any money, and falsely purported in their advertising to disclose all of the terms and conditions that must be met by the contestant, and actually set out therein a portion only of such terms and conditions, without stating such fact, through such statements, among numerous others, as "Send answer quick, and we will tell you how the winner gets \$1250 cash for promptness," "Send no money—just mail coupon," "Remember, *send not one penny* with your answer. All you do now is to find ten *faces* if you can and mail the coupon. Send answer right away. Three prominent and reliable judges will see that the prizes are awarded honestly and promptly. * * * Over 100 grand prizes in all and many special prizes. PRIZE MONEY NOW IN BANK. * * * Just mark the faces you find and send with the coupon right away. Don't you want the opportunity to win \$2,250.00 First Grand Prize? * * * *Don't delay. Do it today!*";

The facts being that such contact advertisements did not disclose the requirement of purchases from, and sales of, their preparations as a necessity for the prize-winning, notwithstanding fact such purchases and sales constituted primary purpose and requisite of the contest, and first information of such requirement was disclosed in the rules enclosed with answers sent to all those replying to such contact advertisement, before any money was sent to the company by any one, on the letterhead of said corporation

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and over the signature of said individual as president, advising contestant about the toilet and beauty preparations, and containing a number of alluring enclosures of "Certificate of Award for 100,000 Auto Votes." printed in simulation of a money coupon, with "\$2,250.00" printed at each of the four corners, and advising recipient that among the "Just 3 Things To Do and the Money will be in Your Hands" was to "1. Send the enclosed Buick Prize Blank promptly with \$2.00 for the Big Six Bargain Assortment and you get 200,000 more Auto Votes at once," and other "come-on" statements and devices of similar tenor; and

- (b) Made use thereafter of form letters, filled in with the names of individual contestants, and intended to give the impression that they were individual letters, and that the recipient was in an unusually favorable position in the contest, and that certain credits which were given or offered at different stages of the contest gave the recipient substantial advanced standing, and that the contestant addressed was in an advanced position over many others in the contest, and encouraging such contestant to increase his efforts to win a prize, and requiring him to send a further order and awarding him a so-called diploma, and including such statements as "It makes me very happy to acknowledge receipt of your third order and to send you the enclosed Official Auto Vote Certificate showing your score of 1,020,000 Auto Votes," "You have qualified for the SPECIAL \$150.00 CASH PROMPTNESS PRIZE," "I have been watching your good work in the contest and I am promoting you to the STAR BOOSTER CLUB," and "I am sending you another order blank on which you can get 500,000 EXTRA FREE AUTO VOTES";

With the result that by reason of said plan and methods, including said advertisements, numerous form letters, system of votes, etc., the primary purpose and effect of which was to encourage contestants to sell the products in question for said company, a substantial number of the consuming public bought a substantial volume of their preparations, and thus unfairly diverted a substantial volume of trade and business to them which would otherwise have gone to competitors who did not use such unfair methods: *Held*, That such acts and practices were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Wm. T. Chantland for the Commission.

Parrish, Guthrie, Watters & Colfleser, of Des Moines, Iowa, 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 G. Fred Stayton, and the Betty White Corporation have been and are now using unfair methods of competition in commerce as defined by 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:

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PARAGRAPH 1. Respondent G. Fred Stayton is now president, general manager, treasurer, and secretary of the Betty White Corporation. He was formerly president of the Paramount Products, Inc., and of the Paramount Products Company. The Betty White Corporation is a corporation incorporated under the laws of the State of Iowa, with main office and principal place of business at 1912 Grand Avenue, Des Moines, Iowa. Respondents are now and have been for some time engaged in the business of distributing and selling in commerce, as herein set out, toilet preparations, cosmetics, and beauty preparations. The present line is known and sold under the name of "Betty White" products and consists of some twenty-nine different items.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said preparations, when sold, to be transported from their place of business in the State of Iowa to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said preparations, distributed and sold by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling cosmetics, toilet and beauty preparations, in commerce among and between the various States of the United States.

In the course and operation of said business and for the purpose of inducing purchase of said preparations, said G. Fred Stayton formerly operated personally and through and under the name of an Iowa corporation, Paramount Products Company, which was legally dissolved prior to October 18, 1935, and an Iowa corporation, Paramount Products, Inc., which was legally dissolved as of October 26, 1935. Thereafter and until the present time said Stayton and his associates have carried on said commerce personally and through and under the name of the Betty White Corporation. Throughout the continuance of said business and commerce respondents, as an essential part of their business, have conducted purported puzzle contests and, in connection therewith, have carried advertisements of such contests and of their preparations put out under various names in various papers and magazines having a general circulation throughout the several States of the United States. Continuously during the course of its business and as a part thereof, respondents have made

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false and fraudulent representations in their said advertising, especially as carried on in connection with the purported contest schemes.

Said respondents, Stayton and associates, personally and through and under the name of a newly formed corporation, respondent Betty White Corporation, continued and still continue to carry on said business under substantially the same plan and methods and with the same or similar advertising as were used by them under former designations. Respondents' present advertising is generally in the form of full page advertisement on the back cover page or inside back cover page of such papers and magazines of general circulation among the several States.

Said purported puzzle contest advertisements are generally identical or similar in form and substance. Among the false and misleading representations contained in such advertisements and the resulting correspondence are those to the effect or which carry the implication—

(1) That a first grand prize of a sedan automobile will be given to the winner and an additional \$1,250 in cash, or, if preferred, a total of \$2,250 will be given if the winner is the first person sending in the correct answer.

(2) That no money is required.

(3) That the only requirement to win a prize is prompt solution of the puzzle. In no place does the contest advertisement disclose the requirement of purchases from and sales of respondents' preparations as a necessity for the prize winning, when in fact such purchases and sales constitute the primary purpose and requisite.

(4) That the advertisement for persons to enter the contest is that of an individual and not that of a company or of a concern having merchandise for sale.

(5) That offers made are exclusively to the individual addressed and that such individual has been selected for special individual favor or has been granted exclusive advantage in the contest.

(6) That certain credits given or offered at different stages of the contest in large figures give the recipient substantial advanced standing.

(7) That letters written to contestants and prospective customers are purely personal to the one addressed.

(8) That a contestant is in an advanced position over all others in the contest and has only a little remaining to do in order to win.

(9) That the person addressed is practically sure to be a winner of the first or one of the grand prizes.

Solving the advertised purported puzzle does not qualify any contestant to win any prize. Prize winning is dependent entirely

upon purchasing and selling large quantities of respondents' products, and respondents' advertisements are deceptive, misleading and unfair in that they fail fully or at all to disclose that prizes can be won only by purchasing and selling large quantities of respondents' products and paying respondents therefor.

In addition to said advertisements, respondents carry on an extensive follow up, "come on" and inducing correspondence relating to the purported puzzle contests, the primary purpose and effect of which is to have the numerous innocent and unsuspecting contestants become sales people for respondents. To heighten the zeal of said supposed contestants and to induce them to increase their sales activity of respondents' products, respondents have a series of form letters made up to appear as though individual, which set forth increasingly the near certainty or certainty that each recipient contestant will win large money and other prizes of great value by making one or two more sizable sales. A system of votes constitutes a part of said scheme. Contestants are led to believe that they are among the few leaders in the contest with increasing emphasis as the contest supposedly nears its close. These letters are form letters and are in and of themselves frauds and misrepresentations in that all contestants are not in an identical favorable position as stated in the letters.

The whole plan is primarily not a puzzle contest at all, but the whole plan and method constitutes and is unfair competition intended to and resulting in the procurement by such deception and misrepresentations of a large sales force to sell respondents' products. Said plan and methods are unfair to all those who are engaged in selling in interstate commerce similar products who do not employ such false and misleading representations and plan and method, and tend unfairly to divert trade to respondents from such competitors who do not employ such deceptive plan and method. Respondents claimed recently to have thus induced 23,000 of such supposed contestants to become sales people of their products as a result of said unfair methods.

PAR. 4. As a result of said respondents' false and misleading representations, plans and methods as above set out, a substantial number of the consuming public have purchased a substantial volume of respondents' preparations with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products in interstate commerce who do not promote or attempt to promote the sale thereof by false and misleading representations, plans, or methods. As a result thereof substantial injury has been and is

now being done by respondents to competitors in commerce among and between the various States of the United States.

PAR. 5. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 29th day of June 1936 issued and served its complaint in this proceeding upon said respondents, G. Fred Stayton and the Betty White Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 17, 1936, the respondents filed their answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respective respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, G. Fred Stayton, is now the president, general manager, treasurer, and secretary of the Betty White Corporation. He was formerly president of the Paramount Products, Inc., and of the Paramount Products Company.

PAR. 2. Respondent, Betty White Corporation, is a corporation incorporated under the laws of the State of Iowa, with its main office and principal place of business at 1912 Grand Avenue, Des Moines, Iowa, and was at the time of the issuance of such complaint, and had been for some time theretofore, engaged in the business of distributing and selling in commerce, toilet preparations, cosmetics, and beauty preparations. The present line of such products is known and sold under the name of "Betty White" products and consists of some twenty-nine different items.

PAR. 3. The said respondents being engaged in business as aforesaid, caused said "Betty White" preparations when sold to be shipped and distributed from the place of business in the State of Iowa to the purchasers of such goods located at various points in States of the United States other than the State of Iowa from which shipments are made, as well as at points in the State of Iowa. At the date of the issuance of said complaint a constant current of trade in commerce was maintained in said preparations so distributed and sold between and among the various States of the United States.

PAR. 4. In the course and conduct of said business, the Betty White Corporation was, at the date of the issuance of said complaint, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling cosmetics, toilet, and beauty preparations in commerce among and between the various States of the United States.

PAR. 5. Prior to the organization of respondent Betty White Corporation, G. F. Stayton was the president of Paramount Products Company, an Iowa corporation, which was dissolved in accordance with the laws of Iowa on February 2, 1934. He was also president of Paramount Products, Inc., an Iowa corporation organized February 7, 1934, and dissolved on October 26, 1935. The Betty White Corporation was organized under the laws of the State of Iowa on August 30, 1935. All of such corporations were engaged in the distributing and selling of cosmetics, toilet, and beauty preparations among and between the various States of the United States.

Throughout the continuance of the conduct of the business of Paramount Products Company, Paramount Products, Inc., and Betty White Corporation, a part of their business was the conducting of prize contests, and in connection therewith advertisements of such contests and of Betty White preparations have been carried in various papers and magazines having a general circulation through the several States of the United States.

PAR. 6. The advertising of Betty White Corporation is generally in the form of full page advertisements on the back cover page or inside back cover page of papers and magazines, many of which are of general circulation among the several States.

Such advertisements are generally identical or similar in form.

Such advertisements and succeeding literature contain statements to the effect that a first grand prize of \$2,250 all in cash, or if preferred a sedan automobile and an additional \$1,250 in cash, as a promptness prize, would be awarded the winner. These advertisements also contain the following language:

"Send answer quick and we will tell you how the winner gets \$1,250 cash for promptness"; "Send your answer quick. Don't delay. There is a \$1,250 cash prize for promptness if declared first prize winner."

PAR. 7. Such advertisements contain the statement that no money is required, typical text containing or relative to such statements are the following:

"Send no money—just mail coupon," (printed in red in large heavy-faced type across the middle of the page of each advertisement)

"Remember *send not one penny* with your answer. All you do now is to find ten *faces* if you can and mail the coupon. Send answer right away. Three prominent and reliable judges will see that the prizes are awarded honestly and promptly. Thousands of dollars in special cash awards. Over 100 grand prizes in all and many special prizes."

* * * * *

"PRIZE MONEY NOW IN BANK

\$1,250.00

Cash

Send answer quick and we
will tell you how the winner
gets \$1,250.00 cash

FOR

PROMPTNESS

The money to pay every prize is on deposit in the *big, strong Des Moines Bank*. You take no risk, if you are declared first prize winner. Hurry! Just mark the faces you find and send with the coupon right away. Don't you want the opportunity to win \$2,250.00 First Grand Prize? Someone wins on our plan—maybe you. Mail your answer quick. *Don't delay. Do it today.*"

(Underscored words printed in black-faced type);

"Remember, *send not one penny* with your answer. You risk no money, and it costs only a postage stamp to send your answer, according to our plan, getting the opportunity to win \$2,250.00 all cash, if prompt."

Some of these so-called contact advertisements are signed "G. F. Stayton, President" and others, "Betty White Corporation."

PAR. 8. The contact advertisement does not disclose the requirement of purchases from, and sales of, respondents' preparations as a necessity for the prize winning, when in fact such purchases and sales constitute the primary purpose and requisite of such contest. The first information of requirement of purchases from, and sales of, respondents' preparations is disclosed in the rules enclosed with the answers which are sent to all persons that answer the contact advertisement, before any money is sent to the company by any such person.

The form two page answer to those who send in one of the purported puzzle solutions is on the letterhead of the "Betty White Corporation—Fine Toilet and Beauty Preparations", and is signed by "G. F. Stayton, President". Said letter for the first time advises the contestant about the toilet and beauty preparations, and contains a number of alluring enclosures including "Certificate of Award for 100,000 Auto Votes", printed in simulation of a money coupon, with "\$2,250.00", printed at each of the four corners of the face thereof. Printed across the middle of this certificate are the words "Redeemed for \$1250 Cash". The letter, following congratulatory and enticing language as to the writer's "splendid start toward success", with such award of 100,000 votes, contains the following language:

I know you are anxious to see right way what to do to get the \$2,250.00 all in cash, or if you prefer, the beautiful "BUICK 8 SEDAN" delivered right to your door by your nearest Buick dealer with \$1,250.00 in cash for being prompt.

Just 3 Things To do and the Money will Be in Your Hands.

1. Send the enclosed Buick Prize Blank promptly with \$2.00 for the Big Six Bargain Assortment and you get 200,000 more Auto Votes at once.
2. Get the most Auto Votes according to the rules enclosed and you will be declared first prize winner.
3. Accept our CERTIFIED CHECK for \$2,250.00.

* * * * *

Remember, I am not asking you to send the full regular price of \$3.30,—just send \$2.00, the SPECIAL INTRODUCTORY price (You save \$1.30)—but send it AT ONCE so you will be entered for the \$1,250.00 promptness prize, otherwise you might win the Buick Sedan and not get the \$1,250.00 promptness prize.

Now you see how Simple and Easy it is. Only one thing to do now—just rush your Buick Prize Blank by return mail. Nothing hard to do,—no risk to you whatever. Just as soon as your Buick Prize Blank and \$2.00 arrives, if prompt you will be immediately entered for the \$1,250.00 in cash for promptness. WON'T THAT BE WONDERFUL? I'll also send you 200,000 more Auto Votes to add to the enclosed 100,000 making you a GRAND TOTAL of 300,000 Auto Votes. This will triple your score—get them quick.

* * * * *

Be sure to show on the Buick Prize Blank whether, if first prize winner, you want the Buick and \$1,250.00 Cash or \$2,250.00 all cash.

PAR. 9. Thereafter, form letters are used in the contest and are filled in with the names of individual contestants to whom such let-

ters are sent in the course of the contest, all intended to give the impression that they are individual letters, and that the recipient is in an unusually favorable position in the contest, and that certain credits which are given or offered at different stages of the contest in large figures give the recipient substantial advanced standing. The exact value of such credits and the manner in which they are computed is shown in the rules of the contest, printed on the back of the "Certificate of Award" above mentioned.

PAR. 10. Form letters are also written to contestants when they had sent in their third orders (approximately 17% of original entrants) stating that the contestant addressed is in an advanced position over many others in the contest, and encouraging such contestant to increase his efforts to win a prize. There were approximately 22,000 entrants in the last contest. These form letters which were sent to all who have sent in three small orders for respondents' toilet articles were thus sent to over 3,700 persons in the last contest. They contain the following language:

It makes me very happy to acknowledge receipt of your third order and to send you the enclosed official Auto Vote Certificate showing your score of 1,020,000 Auto Votes.

You have qualified for the SPECIAL \$150.00 CASH PROMPTNESS PRIZE and if First Prize Winner you will receive a total of More than \$2,250.00.

I have been watching your good work in the contest and I am promoting you to the STAR BOOSTER CLUB. We are happy indeed to send you the enclosed DIPLOMA OF RECOGNITION AND ADVANCEMENT. This shows that YOU HAVE PASSED MANY CONTESTANTS And now I want to see you forge ahead to victory.

I am sending you another order blank on which you can get 500,000 EXTRA FREE AUTO VOTES. This is the FINAL FREE AUTO VOTE OFFER and I want you to send your order right away. Be sure to keep your 20% commission.

The diploma referred to which was enclosed is printed in simulation of an official document with ornate etched border and etching for seal and is in the following language:

Office of the President

By These Presents be it known that:

Is Hereby Awarded

This

DIPLOMA

of

RECOGNITION AND ADVANCEMENT

In Appreciation of the Representation Given Betty White Beauty Preparations By the above Named AUTO CLUB MEMBER and For the

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Further Reason That Said Member's Auto Vote Score is In Excess of One Million Auto Votes, This Diploma of Recognition and Advancement is awarded and said Member is Hereby Advanced to Membership in the STAR BOOSTER CLUB.

The Signature Of The President Of the Betty White Corporation is Authorized On this Membership this ----- Day of ----- at the Office of The Company in Des Moines, Iowa.

Star
Booster
Club

G. F. STAYTON, *President.*
Betty White Corporation, 1912 Grand Ave.,
Des Moines, Iowa.

PAR. 11. Solving the advertised puzzle does not of itself qualify and/or entitle any contestant to win any prize. Prize winning is dependent entirely upon purchasing and selling respondents' products. The business carried on by the Betty White Corporation was conducted on the same general plan as that used by Paramount Products, Inc.

In addition to said advertisements, respondents carry on an extensive system of sending follow-up letters and literature relating to the prize contest (as indicated by extracts above set out) the primary purpose and effect of which is to encourage contestants to sell toilet preparations, cosmetic and beauty preparations for the Betty White Corporation.

Form letters used numbered up to #30, and a system of votes in very large numbers, were used as a part of this plan devised to sell Betty White products, which was similar to that previously employed by respondent Stayton to sell similar products under different names. Respondents' business conducted in the manner above described has been and is in competition with all others who are engaged in selling similar products in interstate commerce.

PAR. 12. As a result of respondents' plan and methods, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations, and so unfairly diverted a substantial volume of trade and business to respondents, which would otherwise have gone to competitors who have not used such unfair methods.

PAR. 13. Respondents state the Betty White Corporation, of which G. F. Stayton is president, completed on July 31, 1936, the contest which was being conducted at the date of the issuance of the complaint and since that time has been engaged in no business except the awarding of the prizes for such contest and other work necessary and incidental to the winding up of such contest and of its corporate affairs.

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The respondent, Betty White Corporation, has stated that it will not conduct or in any manner engage in any business of the kind or nature heretofore conducted by it, or any other business except its own liquidation, and will as speedily as possible wind up its affairs and effect its final dissolution in accordance with the laws of the State of Iowa.

The respondent, G. Fred Stayton, has stated that he will not engage in or conduct any business of the kind or nature described in the complaint and that he has not, since July 31, 1936, engaged in any such business except in the course of his work as president of the Betty White Corporation, in the winding up of the business affairs of said company and as necessarily incident to the awarding of the prizes won in the contest which ended July 31, 1936.

CONCLUSION

The aforesaid acts and practices of the respondents, G. Fred Stayton and the Betty White Corporation, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the agreed stipulation of facts entered into between the respondents herein, G. Fred Stayton and Betty White Corporation, and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said 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 ordered, That the respondents, G. Fred Stayton and Betty White Corporation and its officers, and their respective representatives, agents, and employees, either directly or indirectly, personally or through any corporate or other device, in connection with the advertising, offering for sale, sale, and distribution of their toilet

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preparations, or other products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that a person solving a problem or puzzle presented in an advertisement and sending said solution to respondents will, without being required to make any other substantial effort, be given a prize, an award or reward, when such is not the fact.

2. Representing that the mere mailing of a correct solution of a problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first, or any other, prize in said contest.

3. Representing that a contestant in any puzzle or problem contest will be required to pay no money.

4. Making use of advertising matter, in any puzzle or problem contest, purporting to disclose all of the terms and conditions that must be met by the contestant when said terms and conditions so set out are not, in fact, the only terms and conditions that must be met in order to be successful in winning a prize or an award in said contest.

5. Making use of advertising matter, in any puzzle or problem contest, in which there is set out a portion of the terms and conditions the contestant will be required to meet without stating that said terms and conditions so specified and set out are, in fact, only a portion of the requirements that must be met by a contestant.

6. Representing that a contestant in any puzzle contest has achieved a more advanced position toward success in said contest than said contestant has in fact achieved.

7. Making use of a form letter with reference to the position in said contest of the addressee therein which represents that it refers to his actual position or relative standing, when such is not the fact.

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

IN THE MATTER OF
MARTIN J. LEYDEN

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

Docket 2822. Complaint, May 27, 1936—Decision, Oct. 21, 1936

Where an individual, engaged in the manufacture, distribution, and sale of a hair preparation, in advertising same in newspapers of general circulation throughout the United States, and in advertising folders and literature circulated throughout the several States—

- (a) Falsely represented that said Leyden's Hair Tonic would remove dandruff completely, stop itching scalp, stop the hair from falling out, and bring the scalp to a healthy condition, start the hair to growing, and bring new life thereto;
- (b) Falsely represented that it would "bring gray and faded hair back to its natural color through the nourishment it imparts to the roots," etc., fact being it would not color, or restore color to, gray or faded hair except in the sense that it might dye the same; and
- (c) Falsely represented that said preparation contained no harmful ingredients, and was good for children to use as well as adults, and was positively harmless; facts being that under certain conditions it might prove harmful, and also might prove harmful when used by certain persons, either children or adults;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with the result that a number of the consuming public, as a direct consequence of such mistaken and erroneous beliefs, bought a substantial volume of said hair tonic, and trade was unfairly diverted to him from competitors engaged in the distribution and sale of hair tonics and other products designed, intended and sold for the treatment of the hair and scalp, and who truthfully advertise same and their effectiveness in use; to the substantial injury of competition in commerce:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. J. T. Welch for the Commission.

Mr. Philip S. Ehrlich, of *San Francisco, Calif.*, 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 Martin J. Leyden, 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, Martin J. Leyden, has his place of business at 168½ Thomas Street, city of Seattle, State of Washington. Respondent is now, and has been for some years, engaged in the business of manufacturing, distributing, and selling, in commerce as herein set out, a certain preparation known as "Leyden's Hair Tonic".

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said hair tonic, when sold, to be transported from his place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said hair tonic so manufactured, distributed and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling hair tonic or other products designed, intended, and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said hair tonic, respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States and has had printed and circulated throughout the several States, to customers and prospective customers, through the United States mails and otherwise, advertising folders and literature in which are made the following statements:

Brings the scalp to a healthy condition, removes dandruff completely, stops the hair from falling and starts it to grow.

It also brings gray and faded hair back to its natural color through the nourishment it imparts to the roots as water renews the green to grass and plants.

You will feel well repaid for your time and small investment when you find yourself with a beautiful head of natural hair.

Leyden's hair tonic is pleasant to use and very effective. It contains no harmful ingredients.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and its effectiveness in use. In all of his

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advertising literature and through other means, respondent represents, through the statements and representations herein set out and other statements of similar import and effect that Leyden's hair tonic (1) will remove dandruff; (2) will stop falling hair; (3) will stop itching scalp; (4) will positively restore gray or faded hair back to its natural color; (5) will restore new life to hair; (6) is good for children to use as well as adults; and (7) is positively harmless.

PAR. 5. The representations made by respondent with respect to the nature and effect of his product when used are grossly exaggerated, false, misleading and untrue. In truth and in fact, the product will not impart nourishment to the hair roots and thereby bring gray or faded hair back to its natural or original color. In fact, said product will not color or restore color to gray or faded hair except in the sense that it may dye the hair. Said product will not bring the scalp to a healthy condition, or remove dandruff completely, or stop hair from falling, or start it to grow. Said product will not stop itching of the scalp and will not restore new life to hair. Said hair tonic may prove harmful under some conditions of its use or when used by certain persons either children or adults.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell hair tonics or other products designed, intended and sold for the purpose of treating the hair or scalp and who do not, in any way, misrepresent the quality or character of their respective product or its effectiveness in use.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing his product and the effectiveness of said product for treating hair and scalp conditions, as hereinabove set out, in his advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling his product was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public has purchased a substantial volume of respondent's hair tonic with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling hair tonics or other products designed, intended and sold for the purpose of treating hair and scalp and who truthfully advertise their respective products and the effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by

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respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 May 27, 1936, issued and served its complaint in this proceeding upon respondent, Martin J. Leyden, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently the respondent filed his answer in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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, Martin J. Leyden, has his place of business at 168½ Thomas Street, in the city of Seattle, State of Washington. For some years, he has been engaged in the business of manufacturing, distributing and selling in commerce among and between the various States of the United States a certain preparation known as "Leyden's Hair Tonic". When the respondent receives orders for said hair tonic, he causes it to be transported from his place of business to purchasers thereof located at various points in other States of the United States. He has, for several years last past, maintained a constant current of trade in said hair tonic which he

manufactures, distributes and sells, in commerce among and between the various States of the United States. The respondent has been at all times in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing and selling hair tonic or other products designed, intended and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States.

PAR. 2. In order to induce the purchase of said hair tonic, the respondent has caused various advertisements to be inserted in newspapers of general circulation throughout the United States and has also printed and circulated throughout the several States, through the United States mails and otherwise, advertising folders and literature in which certain representations are made. Some of the statements are as follows:

Brings the scalp to a healthy condition, removes dandruff completely, stops the hair from falling and starts it to grow.

It also brings gray and faded hair back to its natural color through the nourishment it imparts to the roots as water renews the green to grass and plants.

You will feel well repaid for your time and small investment when you find yourself with a beautiful head of natural hair.

Leyden's hair tonic is pleasant to use and very effective. It contains no harmful ingredients.

These statements, together with many other statements appearing in his advertising literature, purport to be descriptive of his product and its effectiveness. The respondent has represented, through the statements herein set out and through other statements of similar import and effect, that Leyden's Hair Tonic (1) will remove dandruff; (2) will stop falling hair; (3) will stop itching scalp; (4) will positively restore gray or faded hair back to its natural color; (5) will restore new life to hair; (6) is good for children to use as well as adults; and (7) is positively harmless.

PAR. 3. The representations made by the respondent with respect to the nature and effect of his product when used are grossly exaggerated, false, misleading and untrue. Leyden's Hair Tonic will not impart nourishment to the hair roots and thereby bring gray or faded hair back to its natural or original color. In fact, said product will not color or restore color to gray or faded hair except in the sense that it may dye the hair. It will not bring the scalp to a healthy condition or remove dandruff completely, or stop hair from falling. It will not start hair to grow and will not restore new life to hair. The use of said product will not stop itching of the scalp. Under some conditions of use, said hair tonic may prove harmful.

When used by certain persons, either children or adults, it may likewise prove harmful.

PAR. 4. There are among respondent's competitors many who manufacture, distribute and sell hair tonics or other products designed, intended and sold for the purpose of treating the hair or scalp and who do not, in any way, misrepresent the quality or character of their respective product or its effectiveness in use.

PAR. 5. The false and misleading statements and representations made by the respondent in designating and describing said hair tonic and its effectiveness in treating hair and scalp conditions were, and are, calculated to, and had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of such mistaken and erroneous beliefs, a number of the consuming public have purchased a substantial volume of respondent's hair tonic. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling hair tonic and other products designed, intended and sold for the purpose of treating hair and scalp and who truthfully advertise their respective products and their effectiveness in use. Thereby, substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Martin J. Leyden, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its

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findings as to the facts and 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, Martin J. Leyden, his representatives, agents and employees, in connection with the offering for sale, sale, and distribution of the product known as "Leyden's Hair Tonic", or any product of substantially the same composition and ingredients sold under the name "Leyden's Hair Tonic" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

- (1) That said product will remove dandruff;
- (2) That it will stop hair from falling out;
- (3) That its use will stop itching scalp;
- (4) That it will restore gray or faded hair back to its natural color;
- (5) That it will restore new life to the hair;
- (6) That it is as good for children to use as for adults; and
- (7) That it is harmless.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF

WILLARD B. CASTERLINE, INDIVIDUALLY AND TRADING AS CASTERLINE BROTHERS

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

Docket 2568. Complaint, Oct. 4, 1935—Decision, Oct. 22, 1936

Where an individual, engaged in purchase of candy and chewing gum in bulk, and in repacking and selling a substantial portion of his said merchandise, advertised in periodicals of nation-wide circulation and resold in practically all stores where such products are sold, arranged as "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering the opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, the largest class by far of purchasers and consumers of such assortments, who buy same in preference to the so-called "straight" goods when displayed side by side, by reason of the lottery or gambling feature connected with the former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy or gum due to the gambling or lottery feature of the so-called "break-and-take," "draw," or "deal" merchandise—

Sold to wholesalers and jobbers of candy and chewing gum, located generally throughout the United States, together with punchboards, push cards, and explanatory display cards for retailers' use (1) assortments in which number punched by chance from board by penny purchaser determined whether particular purchaser received one or two sticks of gum, or one or two small packages of candy, or one of the other articles of merchandise included, or the half pound box of candy secured by last punch on board; (2) assortments in which number pushed by chance from card by nickel purchaser determined whether particular purchaser received one package of chewing gum, one or two packages of candy, or one of the other articles of merchandise included, or half pound box of candy procured by last push on card; and (3) assortments of penny candies of uniform size and shape, in which chance selection of certain pieces, colored centers of which differed from those of the majority, resulted in particular purchaser making such chance selection receiving one of larger pieces included with assortment, or one of the other articles of merchandise thus included, and in which purchaser of last piece in assortment secured a half pound box of candy; so packed and assembled that such various assortments could be and were displayed and offered by the numerous retail dealer purchasers thereof, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to public by lot or chance by such retail dealers therein; in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among

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children, as injurious to the industry in question through resulting in the merchandising of a chance or lottery instead of candy or gum, and as providing retail merchants with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy or gum so packed and assembled that it can be sold to the public by lot or chance;

With the result that competitors refusing, as aforesaid, to sell candy or gum so packed and assembled that it could be sold to the public by lot or chance, and who could compete on even terms only by giving the same or similar devices to retailers, were put to a disadvantage and their sales of "straight" candy showed a continued decrease, some competitors began the sale and distribution of candy and chewing gum for resale to the public by lot or chance to meet the competition of those who sold and distributed candy or gum resold by such methods and the demand therefor, the public and competitors were prejudiced and injured, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry in question:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Willard B. Casterline, individually and trading as Casterline Brothers, 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 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 is an individual trading under the name and style of Casterline Brothers, with his principal office and place of business in the city of Chicago, State of Illinois. Respondent is now and for more than one year last past has been engaged in purchasing candy and chewing gum in bulk and repacking and selling the same to wholesale and retail dealers. Respondent sells said candy and chewing gum to wholesale 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 his place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United

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States at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by said respondent in such candy and chewing gum between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of candy and chewing gum in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages or sales plans which respondent has been or is using in the distribution of candy and chewing gum by lot or chance:

(a) One of said assortments is designated and described by respondent as "1¢ Sunnyside Merchandising Unit." The assortment consists of a number of sticks of Sunnyside Chewing Gum, a number of small packages of candy, a number of other articles of merchandise and a half-pound box of candy, together with a device commonly called a punchboard. The candy, chewing gum, and other articles of merchandise contained in said assortment are distributed to purchasers of punches from said punchboard in the following manner:

Punches from said board are 1¢ each, and when a punch is made a number is disclosed. There are as many separate numbers on the board as there are punches, and the numbers begin with 1, but are not arranged numerically. The board bears statements or legends informing the prospective customer as to which numbers receive one stick of chewing gum, which numbers receive two sticks of chewing gum, which numbers receive one small package of candy, which numbers receive two small packages of candy, and which numbers receive the other articles of merchandise. The last punch on the board receives the half-pound box of candy. The numbers on the board are effectively concealed from the purchasers or prospective purchasers until a punch or sale has been made and the particular punch separated from the board. The candy and chewing gum and other articles of merchandise in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

(b) Another assortment distributed by respondent is designated and described by respondent as "5¢ Sunnyside Square Deal Merchandising Plan". The said assortment consists of a number of 5¢

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packages of chewing gum, a number of small packages of candy, other articles of merchandise and a half-pound box of candy, together with a device commonly called a push card. The candy and other articles of merchandise contained in said assortment are distributed to purchasers of pushes from said card in the following manner:

Pushes from said card are 5¢ each and when a push is made a number is disclosed. There are as many separate numbers on the card as there are pushes, and the numbers begin with 1, but are not arranged numerically. The card bears legends informing the prospective purchaser as to which numbers receive one of the five-cent packages of chewing gum, which numbers receive one of the small packages of candy, which numbers receive two of the small packages of candy, and which numbers receive the other articles of merchandise. The last push on the card receives the half-pound box of candy. The numbers on the card are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The candy, chewing gum and other articles of merchandise contained in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(c) Another assortment includes a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy, a half-pound box of candy and another article of merchandise, together with a display card. The larger pieces of candy, the other article of merchandise and the half-pound box of candy are to be given as prizes to purchasers of the small pieces of candy of uniform shape and size in the following manner.

The majority of said pieces of candy have white centers, but a few of said pieces of candy have red centers, and one of the pieces of candy has a green center. The color of the center of these pieces of candy is effectively concealed from the prospective customer until a selection has been made and the piece of candy broken open. The said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies having a center colored red are entitled to receive and are to be given free of charge, one of the larger pieces of candy. The purchaser who procures the green center is entitled to receive and is to be given free of charge, the article of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the half-pound box of candy. The aforesaid purchasers of said candy who procure a candy having a center colored red or green are thus to procure one of the larger pieces of candy

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or the other article of merchandise wholly by lot or chance. The display card furnished with said assortment bears statements or legends informing the prospective customer that said assortment is being sold and distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers to whom respondent sells his assortments resell said assortments to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy and chewing gum to the purchasing public, in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means for conducting lotteries in the sale of his products (in accordance with the sales plans hereinabove set forth), as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy and chewing gum offered for sale and sold by his competitors.

PAR. 4. The sale of said candy and chewing gum to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure additional or larger pieces or packages of candy or chewing gum in the manner alleged. Such sales of candy and chewing gum, along with the sale of such chance to procure such larger or additional pieces or packages of candy or chewing gum in the manner alleged are contrary to the established public policy of the several States of the United States and of the Government of the United States, and in many of the States of the United States are contrary to the local criminal statutes.

By reason of said facts many persons, firms, and corporations who make and sell candy or chewing gum in competition with respondent as above alleged, are unwilling to offer for sale or sell candy or chewing gum so packed and assembled 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 or additional pieces or packages of candy or chewing gum by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent, in preference to candy and chewing gum offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candy and chewing gum are induced to purchase said candy and chewing gum

so offered for sale and sold by respondent in preference to all others, because said ultimate purchasers give preference to respondent's said candy and chewing gum on account of said game of chance involved therein. The use of said methods by respondent has a 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 equivalent methods, to exclude from said candy and chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said candy and chewing gum trade, and to tend to create a monopoly of said candy and chewing gum trade in respondent and such other distributors of candy and chewing gum as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy and chewing gum trade. The use of said methods by the respondent has the tendency and capacity unfairly to eliminate from said candy and chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods that are contrary to public policy and to criminal statutes as above alleged.

PAR. 6. 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 methods are 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 methods are detrimental to public morals and to the morals of the purchasers of said candy or chewing gum, or because of any or all of said reasons.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 4, 1935, issued and served its complaint in this proceeding upon the respondent, Willard B. Casterline, individually and trading as Casterline Brothers, charg-

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ing him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent in proper person; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and the briefs in support of the complaint and in opposition thereto, no request having been made to orally argue the matter; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Willard B. Casterline, is an individual trading under the name and style of Casterline Brothers with his principal office and place of business in the city of Chicago, State of Illinois. Respondent is now, and for several years last past has been engaged in purchasing candy and chewing gum in bulk and repacking and selling the same to wholesale dealers and jobbers of candy and chewing gum located generally throughout the United States. He causes said candy and chewing gum when sold to be shipped and transported from his principal place of business in Chicago, Ill., to purchasers thereof in the various States of the United States at their respective points of location. In so carrying on said business respondent is and has been engaged in interstate commerce and is and has been in active competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy and chewing gum in commerce between and among various States of the United States.

PAR. 2. Among the assortments sold and distributed by respondent is an assortment designated as "1¢ Sunnyside Merchandising Unit". This assortment consists of a number of sticks of chewing gum, a number of small packages of candy, a number of other articles of merchandise and a half-pound box of candy together with a device commonly called a "punchboard". The candy, chewing gum and

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other articles of merchandise contained in said assortment are distributed to purchasers of punches from said punchboard in the following manner:

Punches from said board are 1¢ each and when a punch is made a number is disclosed. The numbers begin with one and continue to the number of punches on the board, but they are not arranged in numerical sequence. The board bears statements or legends informing purchasers and prospective purchasers as to which numbers receive one stick of chewing gum, which numbers receive two sticks of chewing gum, which numbers receive one small package of candy, which numbers receive two small packages of candy and which numbers receive one of the other articles of merchandise. The last punch on the board receives the half-pound box of candy. The numbers on the board are effectively concealed from purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one or two sticks of chewing gum, or receives one or two small packages of candy, or one of the other articles of merchandise, or the half-pound box of candy is thus determined wholly by lot or chance.

PAR. 3. Another assortment sold and distributed by respondent is designated and described as "5¢ Sunnyside Square Deal Merchandising Plan". This assortment consists of a number of 5¢ packages of candy, a number of other articles of merchandise, and a half-pound box of candy together with a device commonly called a "push card". The chewing gum, candy, and other articles of merchandise contained in said assortment are distributed to purchasers of pushes from said card in the following manner:

Pushes from said card are 5¢ each, and when a push is made a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but they are not arranged in numerical sequence. The card bears legends informing purchasers and prospective purchasers as to which numbers receive one of the 5¢ packages of chewing gum, which numbers receive one of the small packages of candy, which numbers receive two of the small packages of candy and which numbers receive one of the other articles of merchandise. The purchaser of the last push on the card receives the half-pound box of candy. The numbers on the card are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one package of chewing gum, one or two packages of candy, or one

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of the other articles of merchandise or the half-pound box of candy is thus determined wholly by lot or chance.

PAR. 4. Prior to the issuance of the complaint in this case, the respondent sold and distributed an assortment which consisted of a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy and a half-pound box of candy and another article of merchandise, together with a display card. The larger pieces of candy, the other article of merchandise, and the half-pound box of candy were given as prizes to purchasers of the small pieces of candy of uniform size and shape in the following manner:

The majority of said pieces of candy had white centers but a few of said pieces of candy had red centers, and one of the said pieces of candy had a green center. The color of the center of these pieces of candy was effectively concealed from purchasers and prospective purchasers until a selection had been made and the particular piece of candy broken open. The said pieces of candy of uniform size and shape retailed at the price of 1¢ each, but the purchaser who procured one of the said candies having a center colored red was entitled to receive and was given free of charge one of the larger pieces of candy. The purchaser who procured the said piece of candy having a green center was entitled to receive and was given free of charge the other article of merchandise included in said assortment, and the purchaser of the last piece of candy in said assortment was entitled to receive and was given free of charge the half-pound box of candy. The aforesaid purchasers of said candy who procured a candy having a center colored red or green, or who purchased the last piece of candy in said assortment, thus procured one of the larger pieces of candy, the other article of merchandise, and the half-pound box of candy wholly by lot or chance. The display card furnished with said assortment bore statements or legends informing purchasers and prospective purchasers that said assortment was being sold and distributed in accordance with the above described sales plan. This assortment was discontinued on or about February 1935, but the Commission has no assurance that its sale and distribution will not be resumed.

PAR. 5. The candy assortments involving the lot or chance feature as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "draw," or "deal," or "break and take" assortments. Assortments of candy without the lot or chance feature 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 designate these types of assortments.

PAR. 6. Respondent has from time to time caused advertisements of his merchandise to be inserted in magazines having a nation-wide circulation. Among such are "Specialty Salesman's Magazine" and "Opportunity Magazine."

PAR. 7. Numerous retail dealers purchase and have purchased the assortments described in paragraphs 2, 3, and 4 above, from wholesale dealers and jobbers who in turn have purchased said assortments from the respondent. Such retail dealers display said packages for sale to the public as packed and assembled by the respondent, and the candy and chewing gum contained in said assortments is sold and distributed to the consuming public by means of the punchboard or push card, or as suggested by respondent, and in accordance with the legends printed on the punchboard, the push card, or on the display card.

PAR. 8. The respondent sells its merchandise to wholesale dealers and jobbers throughout the United States, and respondent's merchandise, both "straight" and "draw" or "deal" and "break and take" assortments, is resold in practically all stores where candy and chewing gum are sold. All types of sales made by the respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealers and jobbers. The assortments are packed and assembled in such manner that they can be displayed and offered for sale, and are designed to be displayed and offered for sale, without alteration, addition, or rearrangement, to the consuming public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy and chewing gum by retail dealers by the methods described herein is a sale and distribution of candy and chewing gum by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to wholesale dealers and jobbers for resale to retail dealers of assortments of candy and chewing gum packed and assembled as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the said candy will be sold to the purchasing public by retail dealers by lot or chance, and he packs and assembles such candy and chewing gum in the way and manner described so that the same may, without alteration, addition, or rearrangement, be sold to the public by lot or chance by said retail dealers.

PAR. 9. Many competitors of respondent regard such methods of sale and distribution as morally bad and as encouraging gambling,

especially among children; as injurious to the candy and chewing gum industry because they result in the merchandising of a chance or lottery instead of candy or chewing gum; 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 or chewing gum 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. 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" candy show a continued decrease.

There is a demand for candy and chewing gum which is sold by lot or chance and in order to meet the competition of competitors who sell and distribute candy which is resold by such methods, some competitors of respondent have begun the sale and distribution of candy and chewing gum for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of his candy and chewing gum is prejudicial and injurious to the public and respondent's competitors who do not resort to or make use of the same methods, and has resulted in the diversion of trade to respondent from his said competitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 10. The principal demand in the trade for the "draw," or "deal," or "break and take" candy assortments comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy and chewing gum assortments are principally children, and because of the lottery or gambling feature connected with the "draw" or "deal" or "break and take" assortments and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight" goods when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy and chewing gum because of the lottery feature connected with their sale. The sale and distribution of "draw" or "deal" or "break and take" assortments of candy and chewing gum, or of candy and chewing gum 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 merchandise.

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PAR. 11. There are in the United States many distributors of candy and chewing gum who do not sell and distribute lottery or prize assortments, and who sell their "straight" merchandise in interstate commerce in competition with the "deal" or "draw" or "break and take" assortments, and distributors of the "straight" type of candy and chewing gum have noted a marked decrease in the sales of their products whenever and wherever the lottery candy and chewing gum assortments have appeared in their markets. This decrease in the sales of "straight" candy and chewing gum is principally due to the gambling or lottery feature connected with the "draw" or "deal" or "break and take" assortments.

PAR. 12. The exact annual volume of respondent's business was not shown, but the respondent testified and the Commission finds that the annual volume of respondent's business is substantial, and that while the sale of the "draw," "deal," and "break and take" assortments is also substantial it is not the major part of respondent's business.

PAR. 13. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy and chewing gum so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Willard B. Casterline, individually and trading as Casterline Brothers, 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of and in opposition to the charges of the complaint, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

It is ordered, That the respondent, Williard B. Casterline, individually and trading as Casterline Brothers, his agents, representatives, and employees in the offering for sale, sale, and distribution by him in interstate commerce of candy and chewing gum, do cease and desist from:

(1) Selling and distributing to wholesale dealers and jobbers for resale to retail dealers candy and chewing gum so packed and assembled that sales of such candy and chewing gum to the general public are to be made or are designed to 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 assortments of candy and chewing gum which are used or are designed to be used without alteration, or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or chewing gum contained in said assortments to the public;

(3) Packing or assembling in the same assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, small boxes of candy, or other article of merchandise which said larger pieces of candy, small boxes of candy or other article of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

(4) Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy and chewing gum, together with a device commonly called a "punchboard" or a device commonly called a "push card" for use or which is designed to be used in the distribution of said candy to the public at retail;

(5) Furnishing to wholesale dealers and jobbers a display card, a punchboard or a push card either with assortments of candy and chewing gum or separately, bearing legends or statements informing the public that the candy and chewing gum are being sold by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

IN THE MATTER OF
SERVICE PRODUCTS, INC., ET AL.

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

Docket 2824. Complaint, May 28, 1936—Decision, Oct. 22, 1936

Where a family group of three individuals, and two corporations organized and controlled by them, and engaged in manufacturing, rectifying, compounding, and selling hair tonic, bay rum, cosmetics, lotions, and like products—

(a) Featured the words "West Point," and the corporate name of said manufacturing corporation, including the words "West Point Laboratories," upon the containers of their said products and in periodicals, papers, pamphlets, and on letterheads and stationery, together with depictions of a cadet in full dress military uniform, and such statements as "In Hollywood as at WEST POINT a well-groomed appearance is essential. Men and women who know and care use WEST POINT natural vegetable oil hair tonic," etc.;

Notwithstanding fact they were never granted permission to use name "West Point," or depiction of a cadet in military hat and uniform, as a trade name, mark, or brand on their products by the authorities of the West Point Military Academy, the Army, or the United States Government, and use by them of the name "West Point," as aforesaid, was objectionable to said authorities, etc.;

With result that various members of the purchasing public received impression and came to conclusion and belief that products thus marked, etc., emanated, or were of a quality and nature endorsed and approved by aforesaid authorities, and substantial numbers of said purchasing public were induced to make purchases thereof by virtue of such belief; and

(b) Included upon their aforesaid labels, etc. a circular red seal with flat surface and irregular outer edges, in center of which was inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.," conveying false and misleading impression that it was an official seal of the State of New York and that said research bureau was a bureau or branch of the State Government;

Notwithstanding fact that officials of said State never granted them permission to use the great seal of the State, and said bureau was not a branch of the State Government, and use by them of any seal or words conveying impression that their products were approved or endorsed by said State, or any bureau or branch thereof, was objectionable to the authorities thereof;

With result that various members of purchasing public received impression and formed conclusion and belief that said products thus stamped or marked with a seal, as above set forth, were authorized and approved by said State, and substantial numbers of said public were induced, by virtue of such belief or impression, to make purchases thereof;

With tendency and capacity to mislead and deceive a substantial portion of such public into the mistaken belief that the goods in question were derived from, or had the approval of a branch of the United States Govern-

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ment or the New York State Government, though neither made by nor for the authorities of said Academy or said respective Governments, nor possessed of their approval, and with result that a number of the purchasing public bought a substantial volume of their said products, and trade was unfairly diverted to them from competitors who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices; to the injury of competition in commerce among the various States:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Philip E. Rosenblum and *Mr. Irving Seidman*, of New York City, 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 Service Products, Inc., and Sam Hagler, Harry Hagler, and Irving Hagler, individually and as officers, directors, and stockholders of Service Products, Inc., and trading under the name of West Point Laboratories, hereinafter referred to as 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:

PARAGRAPH 1. (a) Respondent, Service Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

(b) Respondent, Sam Hagler, is the manager and principal owner of the stock of respondent, Service Products, Inc.

(c) Harry Hagler is president and a stockholder in respondent, Service Products, Inc.

(d) Irving Hagler is secretary and treasurer and a stockholder of respondent, Service Products, Inc.

(e) Respondents, Sam Hagler, Harry Hagler, Irving Hagler, and Service Products, Inc., also operate under the trade name "West Point Laboratories" and all of the business of said respondents is carried on at 125 Rivington St., New York City, State of New York.

PAR. 2. Respondents are and have been for more than three years last past, engaged in the business of manufacturing or compounding sundry toilet articles which respondents sell to dealers, distributors, and the public and shipping said products from their place of business

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in the city of New York, State of New York, through and into other States of the United States, to the purchasers thereof, in commerce in competition with other individuals, companies, and corporations engaged in the sale and transportation of like merchandise in like commerce. Among the articles so manufactured or compounded and sold by respondents are hair tonic, hair dye, bay rum, lotions, ointment, witch hazel, rubbing alcohol, and shampoo preparations.

PAR. 3. Respondents in the course and conduct of their business as set out in paragraphs 1 and 2 mark, brand, and advertise their said products variously as follows, viz:

(a) "West Point—Natural Vegetable Oil—Hair Tonic—West Point Laboratories, N. Y." and other matter together with pictorial representation of a cadet in full military uniform and/or the head of a cadet with full dress military hat simulating the dress and make-up of students of the West Point Military Academy, West Point, N. Y., U. S. A.

(b) "West Point Bay Rum—West Point Laboratories, N. Y."

(c) "West Point" with other matter descriptive of the particular products.

Respondents cause said advertising matter to be marked or stamped upon the bottles, jugs, jars, and containers and upon the cartons and boxes in which the products are packed when sold and shipped and upon letterheads and bill heads; inserted in newspapers and magazines; printed on cards and posters placed in drug stores, department stores and barber shops and in circulars and theater programs and to be used in programs broadcast over the radio featuring "West Point Hair Tonic", and "West Point Bay Rum" and other respondent's products, as "West Point Laboratories" products.

Featuring the products as herein described by use of such terms gives the impression and conveys the idea that the said products are manufactured or compounded according to United States Government specifications or adopted by the War Department for the use of cadets at West Point Military Academy, contrary to the facts, and is false, deceptive and misleading.

PAR. 4. Respondents, cooperating among themselves and together with Shelley Braverman—operating under the name "Official Research Bureau of New York, Inc.", 271 Madison Avenue, New York City, State of New York, in addition to the advertising matter describing the products put out by respondents upon the containers of which is printed the picture of a cadet in military uniform and the name "West Point" and "West Point Laboratories" and other matter as described in paragraph 3, have printed on said containers and boxes an endorsement bearing a red seal imprinted thereon in a circle with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" which words are encircled within the

words "Official Research Bureau of New York, Inc.", simulating the great seal of the State of New York and conveying the impression that respondents' products are approved as to quality and merit by authorities of the State of New York, contrary to the fact.

PAR. 5. The implied and positive representation made (as set out in paragraphs 2, 3, and 4) by respondents hold out these and other products as "West Point Laboratories" products and that said products have the approval of the "Official Research Bureau of New York, Inc." Said representations are misleading and deceptive, and purchasers are thereby deceived and led to believe that the products held out to the purchasing public by respondents are made for or according to specifications authorized and approved by the United States War Department of which West Point Military Academy is a branch and that said products are approved by the authorities of the State of New York, contrary to the facts. In truth, the fact is that none of respondents' products are made according to specifications authorized and approved by the War Department or authorities of the United States Government, or by authorities of the State of New York.

PAR. 6. The West Point Military Academy located at West Point in the State of New York was created by Act of Congress, March 16, 1802 (U. S. Stat. at L., Ch. 9, Sec. 28), and is a branch of the Army and a part of the United States Government. The name "West Point" when used, together with pictorial representation of a cadet in full military uniform or the head of a cadet in full dress military hat refers to, represents and suggests in the minds of the purchasing public, said West Point Military Academy. It is universally recognized and conceded that West Point Military cadets are well groomed and caparisoned. The name "West Point" has a popular appeal for and commands the high respect of the American public and induces emulation of its cadets. Respondents have never been granted permission to use the name "West Point" or the representation of a cadet in military hat and uniform as a trade name, mark, or brand on their products by the authorities of said West Point Military Academy, the Army, or the United States Government. The authorities of said West Point Military Academy, the Army, and the United States Government object to the use by respondents of the name "West Point" as a trade name, mark or brand on products manufactured and sold by respondents.

PAR. 7. The State of New York is a sovereign State of the United States and has adopted and uses an official seal. The name New York and the official seal of the State when properly used are recognized and respected by the several States and all authorities with the

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United States. This seal when properly used by officials of the State or by *bureaus* created by authority of the State, vouchsafe the authority, credit, and good faith of the sovereign State of New York. The officials of the State of New York have not granted respondents (or Shelley Braverman) permission to use the great seal of the State of New York. The seal used by respondents as described in paragraph 4, that is, a circular red seal with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.", is false and misleading and conveys the impression that it is an official seal of the State of New York and that the "Official Research Bureau of the State of New York, Inc." is a *bureau* or branch of the Government of the State of New York, which it is not. The authorities of the State of New York object to the use by respondents of any seal or words which convey the impression that respondents' products are approved or are endorsed by the State of New York, or any *bureau* or branch of the State Government.

PAR. 8. There are among competitors of respondents, individuals, partnerships, corporations, engaged in the sale and distribution of like and similar products to those manufactured and sold by respondents within the State of New York and other States of the United States who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices.

PAR. 9. The practices of respondents as stated have had and have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the goods to be purchased of respondents are derived from or have the approval of a branch of the U. S. Government, or the Government of the State of New York, when in fact they are not so derived and do not have such approval. In truth and in fact none of the products manufactured and sold by respondents are manufactured by or for or have the approval of the authorities of the West Point Military Academy, the U. S. Government, or the Government of the State of New York.

Further, as a direct consequence of mistaken and erroneous beliefs induced by the acts and representations of respondents as herein detailed, a number of the purchasing public have purchased a substantial volume of respondents' products with the result that the trade has been unfairly diverted to respondents from competitors referred to in paragraph 8. As a result thereof, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States.

Findings

PAR. 10. The above alleged acts and things done by respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce 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 28th day of May 1936, issued and served its complaint in this proceeding upon the respondents Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler individually, and as officers, directors, and agents of said corporation, and upon Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler trading under the name "West Point Laboratories, Inc.", charging them with the use of unfair method of competition in commerce in violation of the provisions of said act. On the 15th day of June 1936, the respondents filed their answer and on the 16th day of September 1936, respondents filed a motion to withdraw their answer and to file a supplemental answer in lieu thereof, and on October 2, 1936, respondents submitted a motion to withdraw their said answer and supplemental answer and submitted a substitute answer therefor, in which substitute answer respondents admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged in the said complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the substitute answer thereto and the Commission having duly considered the same and being now 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, Service Products, Inc., is a corporation organized in 1931 under and by virtue of the laws of the State of

New York, by respondents Sam Hagler, Harry Hagler, and Irving Hagler. It is a corporation owned by a family group composed of respondents Sam Hagler (the father and his two sons), Harry Hagler, and Irving Hagler. Said respondents Service Products, Inc., Sam Hagler, Harry Hagler, and Irving Hagler are and have been doing business in interstate commerce, and in the District of Columbia, since the organization of said company.

PAR. 2. Respondent individuals also organized under and by virtue of the laws of the State of New York "West Point Laboratories, Inc.", which company they operate and control. This company manufactures, distills, rectifies and compounds hair tonic, bay rum, cosmetics, lotions, and like products which are marketed, sold and shipped by respondent Service Products, Inc., under the trade name "West Point Laboratories". Respondent individuals caused said trade name "West Point" to be registered in the United States Patent Office on November 22, 1932, and they have used and now use said name "West Point" as a trade name and as a part of the corporate name of the said "West Point Laboratories, Inc.", continuously since long prior to date of registration.

PAR. 3. During the operation and conduct of their said business respondents sell and ship their said products from their place of business in the city and State of New York through and into other States of the United States other than the State of New York and into the District of Columbia to purchasers thereof in competition with other manufacturers and dealers engaged in the sale of like products in interstate commerce.

PAR. 4. Respondents make use of the following designations, indorsements and recommendations upon the bottles, jugs, boxes, and containers in which their said hair tonic, bay rum and other products are packed and in magazines, papers, pamphlets, and other periodicals, and upon letterheads and stationery printed and circulated in commerce as herein set out:

1. "WEST POINT natural vegetable oil hair tonic, WEST POINT LABORATORIES, New York", with a picture superimposed thereon of the head of a cadet in military cap, together with a seal affixed thereto, upon which seal are the words

"SEAL OF APPROVAL
OFFICIAL RESEARCH BUREAU OF NEW YORK"

2. "WEST POINT hair tonic".

3. "WEST POINT natural vegetable oil hair tonic, WEST POINT LABORATORIES, New York", with a picture of a cadet in full dress military uniform superimposed thereon.

4. "WEST POINT bay rum, WEST POINT LABORATORIES, New York."

5. "In Hollywood as at WEST POINT a well-groomed appearance is essential. Men and women who know and care use WEST POINT natural vegetable

oil hair tonic, sold at all leading drug and department stores", together with a full figure pictorial representation of a WEST POINT cadet, lieutenant.

PAR. 5. Various members of the purchasing public upon observing the words "West Point" together with a picture representing the head of a cadet in military cap, or a cadet in military uniform accompanying the name "West Point Laboratories, Inc.", on the products manufactured and sold by respondents or in circulars and advertisements put out by respondents as herein set out and described, have received the impression and formed the conclusion and belief that the products so marked, printed and advertised emanated from or were of a quality and nature endorsed and approved by authorities of the United States Military Academy at West Point, New York, and that such products stamped or marked with a seal and the words "Seal of Approval Official Research Bureau of New York" in conjunction therewith are authorized and approved by the State of New York. Substantial numbers of the purchasing public have been induced by virtue of such belief or impression to make purchases of said products.

PAR. 6. The United States Military Academy located at West Point in the State of New York was created by Act of Congress, March 16, 1802 (U. S. Stat. at L., Ch. 9, Sec. 28), and is a branch of the Army and a part of the United States Government. The name "West Point" when used, together with pictorial representation of a cadet in full military uniform or the head of a cadet in full dress military hat refers to, represents and suggests in the minds of the purchasing public, said United States Military Academy at West Point, New York. It is universally recognized and conceded that West Point Military cadets are well groomed and caparisoned. The name "West Point" has a popular appeal for and commands the high respect of the American public and induces emulation of its cadets. Respondents have never been granted permission to use the name "West Point" or the representation of a cadet in military hat and uniform as a trade name, mark, or brand on their products by the authorities of said West Point Military Academy, the Army, or the United States Government. The authorities of said West Point Military Academy, the Army, and the United States Government object to the use by respondents of the name "West Point" as a trade name, mark or brand on products manufactured and sold by respondent.

PAR. 7. The State of New York is a sovereign State of the United States and has adopted and uses an official seal. The name New York and the official seal of the State when properly used are recognized and respected by the several States and all authorities of the United States.

This seal when properly used by officials of the State or by *bureaus* created by authority of the State, vouchsafe the authority, credit, and good faith of the sovereign State of New York. The officials of the State of New York have not granted respondents (or Shelley Braverman) permission to use the great seal of the State of New York. The seal used by respondents as described in paragraph 4, that is, a circular red seal with flat surface and irregular outer edges in the center of which is inscribed "Seal of Approval" encircled within the words "Official Research Bureau of the State of New York, Inc.", is false and misleading and conveys the impression that it is an official seal of the State of New York and that the "Official Research Bureau of the State of New York, Inc." is a *bureau* or branch of the Government of the State of New York, which it is not. The authorities of the State of New York object to the use by respondents of any seal or words which convey the impression that respondents' products are approved or are endorsed by the State of New York, or any *bureau* or branch of the State Government.

PAR. 8. There are among competitors of respondents, individuals, partnerships, corporations, engaged in the sale and distribution of like and similar products to those manufactured and sold by respondents within the State of New York and other States of the United States who do not misrepresent their merchandise by the use of false and misleading corporate and trade names, marks, brands, and devices.

PAR. 9. The practices of respondents as stated have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the goods to be purchased of respondents are derived from or have the approval of a branch of the U. S. Government, or the Government of the State of New York, when in fact they are not so derived and do not have such approval. In truth and in fact none of the products manufactured and sold by respondents are manufactured by or for or have the approval of the authorities of the West Point Military Academy, the U. S. Government, or the Government of the State of New York.

Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of respondents as herein detailed, a number of the purchasing public have purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to respondents from competitors referred to in paragraph 8. As a result thereof, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, Service Products, Inc., and respondents Sam Hagler, Harry Hagler, and Irving Hagler, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondents, in which substitute answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said 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 ordered, That the respondent Service Products, Inc., its officers, representatives, agents, and employees, and respondents Sam Hagler, Harry Hagler, and Irving Hagler, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of their hair tonic, bay rum and other products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by inference, through use of the imprint of a seal and the words, "Seal of Approval—Official Research Bureau of New York", or any other words, or through any other means, or in any other manner that the business conducted by them or the various products sold by them have been approved or endorsed by the State of New York or any branch or bureau thereof.

2. Representing, directly or by inference, through the use of either a picture of a head of a cadet with military cap, or a picture of a cadet in military uniform, or any other picture of a person in military cap or military uniform, standing alone or in conjunction with the words "West Point" or any other words, or through the use of the words, "West Point", alone or in conjunction with other words, or

through any other means, that said products have been made or compounded under any specification set or approved by the War Department of the United States Government or have been adopted and approved for use in U. S. West Point Military Academy—provided that nothing herein shall prohibit the use of the words “West Point” as set out in subsection 3 hereof.

3. The use of the words “West Point” in connection with the marks or brands stamped or printed upon the bottles, jugs and containers, or upon wrappers, cartons and packages in which the products are packed, sold and shipped, or in advertising matter, circulars, catalogs, letterheads or stationery, or in any other media describing respondents’ products; and the use of the words “West Point” in connection with or as a part of the corporate, company or trade name “West Point Laboratories, Inc.”, unless and until the words “West Point” in the said corporate, company, trade and brand name “West Point Laboratories, Inc.” are in every instance accompanied by qualifying words in close proximity to the words “West Point” or “West Point Laboratories, Inc.”, in letters approximately one-half as large and in color and shape equally as conspicuous as the said words “West Point” or “West Point Laboratories, Inc.”, which shall contain a statement showing clearly that the products are not the products of the United States Military Academy at West Point, New York, and have not been authorized or consented to by authorities of the United States Military Academy at West Point, New York.

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

Syllabus

IN THE MATTER OF

GUSTAVE GOLDSTEIN, TRADING AS HUMANIA HAIR
& SPECIALTY MFG. CO.¹

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

Docket 2724. Complaint, Feb. 18, 1936—Decision, Oct. 26, 1936

Where an individual, engaged in the sale of hair goods, cosmetics, and toilet preparations, mailed or shipped to purchasers in various States—

- (a) Represented, through pamphlets, catalogs, and other advertisements circulated generally throughout the United States, and through labels attached to his merchandise, that he was a manufacturer of hair and specialty goods; facts being he had no factory which he owned, leased, or controlled, but bought his said merchandise from various manufacturing companies and jobbers;
- (b) Represented, as aforesaid, that he was an importer of hair goods; facts being he was not such an importer, though he did, in fact, sell some imported hair goods purchased by him in this country;
- (c) Falsely represented, as aforesaid, that his "Requas Ear Oil" would bring relief from deafness, and that his "Magic Shaving Powder" did not affect the growth of hair nor injure the skin;
- (d) Falsely represented, as aforesaid, that his "La-Em-Strait" and "Madam Walker's Hair Grower" prevented dandruff and falling hair and promoted hair growth, and that his "High Brown Hair Grower" was a combination hair grower and straightener, and falsely set forth that other preparations sold by him under various names made harsh hair soft and silky, promoted growth of hair on the temples, made kinky hair glossy, long, and straight, or grew hair, or restored white and gray hair to a lustrous black, etc.; and
- (e) Falsely represented that his "High Brown Beauty Ointment," "Dr. Ford Palmer's Skin Whitener," and other preparations sold by him under various names, rid the face of blemishes, pimples, etc., got rid of eczema, whitened and lightened dark blotchy skin almost over night, etc., without injury, and that other cosmetics and toilet preparations sold by him were efficacious in the restoration and treatment of the hair and skin and not injurious to latter or to the scalp;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that he owned, operated or controlled a plant for the manufacture of the various products dealt in by him, as aforesaid, and that in purchasing of him they were dealing directly with the factory and securing for themselves advantages of closer prices and superior quality, as well as eliminating middleman, and that he actually imported certain of his hair goods, and that the various products sold by him would actually accomplish the results represented or claimed, as aforesaid, and

¹ Prior findings of facts and conclusion and order to cease and desist in this matter made as of May 13, 1936, were vacated and set aside by order of the Commission on October 26, 1936.

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of inducing a substantial number of such public to buy a substantial volume of his said products as a result of such mistaken and erroneous beliefs, and of diverting trade unfairly thereby to himself from individuals or concerns similarly engaged in the manufacture, importation, distribution, and sale of such products, and who truthfully represent, or do not misrepresent, their business status or operations or the benefits that may reasonably be expected to accrue to the user of the products sold by them; to the substantial injury of substantial competition in commerce:

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

Mr. Reuben J. Martin for the Commission.

Mr. Philip Silverman and Reeves, Todd, Ely & Beaty, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 Gustave Goldstein, trading as Humania Hair & Specialty Mfg. Co., hereinafter referred to as the 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, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is an individual, trading as Humania Hair & Specialty Mfg. Co., with his principal office and place of business at 10-12 East 23rd Street, New York, N. Y. Respondent is now and for more than two years last past has been engaged in the sale of hair goods, cosmetics, and toilet preparations, and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said merchandise, when sold, to be transported in interstate commerce from his place of business in the State of New York, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is now and has been, for more than two years last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture, sale, and distribution of hair goods, cosmetics, and toilet preparations, in interstate commerce between and among the various States of the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's merchandise is used.

PAR. 3. In the course and conduct of his said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, hair goods, cosmetics, and toilet preparations has represented and does now represent, in and by circulars, pamphlets, catalogues, and other advertisements, circulated generally throughout the United States, and by labels attached to respondent's merchandise:

That respondent is a manufacturer of hair and specialty goods;

That respondent is an importer of hair goods;

That some of the wigs advertised and sold by respondent are imported French wigs, made of finest quality soft French hair;

That continued use of respondent's "Requas Ear Oil" will bring relief for deafness;

That respondent's "Magic Shaving Powder" does not affect the growth of hair and does not injure the skin;

That respondent's "LA-EM-STRAIT" and "Madam Walker's Hair Grower" prevent dandruff, falling hair and promote hair growth;

That respondent's "High Brown Hair Grower" is a combination hair grower and straightener;

That respondent's "Black and White Hair Grower" makes harsh, stubborn, nappy hair soft and silky.

That respondent's "High Brown Temple Oil" promotes the growth of hair on the temple;

That respondent's "Herolin" makes kinky, nappy or coarse hair soft, glossy, lustrous, long and straight;

That respondent's "Kongolene" positively straightens the hair;

That respondent's "Madam Walker's Temple Grower" will cause the hair to grow on bald spots;

That respondent's "Apex Pomade" has never failed to grow hair and is positively guaranteed to restore hair;

That respondent's "Moorish Straight Black" will instantly restore white and gray hair to a lustrous jet black and straighten it at the same time;

That respondent's "RO-ZOL FACE BLEACH" is an effective remedy for skin diseases;

That respondent's "High Brown Beauty Ointment", "Golden Brown Beauty Ointment" and "Dr. Ford Palmer's Skin Whitener Ointment" rid the face of blemishes, tetter rash, pimples, liver spots, freckles and blackheads;

That respondent's "Black and White Ointment" is a sure way to get rid of eczema;

That respondent's "Genuine Black and White Bleaching Cream" and "Golden Brown Beauty Ointment" whiten and lighten dark,

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blotchy skin almost overnight and permit any desired shade to be retained, without injury to the skin, and that other cosmetics and toilet preparations of respondent are efficacious in the restoration and treatment of the hair and skin and are non-injurious to the scalp and skin.

PAR. 4. In truth and in fact, the statements hereinabove in paragraph 3 set forth and respondent's representations in circulars, pamphlets, catalogues and other advertisements in said paragraph 3 specified are, and each of them is, extravagant, false, misleading and deceptive.

The use of respondent's cosmetics and toilet preparations do not have the effects claimed as to either hair or skin.

Respondent is not a manufacturer of hair and specialty goods; and has, and has had, no factory which it owns, leases or controls, but, on the contrary, respondent purchases its merchandise, hereinabove specified, from various manufacturing companies and jobbers;

Respondent is not an importer of hair goods; but, on the contrary, buys and sells only domestic merchandise;

The wigs advertised and sold by respondent are not imported French wigs, nor are they made of finest quality soft French hair;

Continued use of respondent's "Requas Ear Oil" will not bring relief for deafness;

Respondent's "Magic Shaving Powder" does injure the skin;

Respondent's "LA-EM-STRAIT" and "Madam Walker's Hair Grower" do not prevent dandruff, falling hair or promote hair growth;

Respondent's "High Brown Hair Grower" is not a combination hair grower and straightener;

Respondent's "Black and White Hair Grower" does not make harsh, stubborn, nappy hair soft and silky.

Respondent's "High Brown Temple Oil" does not promote the growth of hair on the temple;

Respondent's "Herolin" does not make kinky, nappy or coarse hair soft, glossy, lustrous, long and straight;

Respondent's "Kongolene" does not positively straighten the hair;

Respondent's "Madam Walker's Temple Grower" will not cause the hair to grow on bald spots;

Respondent's "Apex Pomade" has failed to grow hair and to restore hair;

Respondent's "Moorish Straight Black" will not instantly restore white and gray hair to a lustrous jet black or straighten it at the same time;

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Respondent's "Ro-ZOL FACE BLEACH" is not an effective remedy for skin diseases;

Respondent's "High Brown Beauty Ointment", "Golden Brown Beauty Ointment" and "Dr. Ford Palmer's Skin Whitener Ointment" do not rid the face of blemishes, tetter rash, pimples, liver spots, freckles or blackheads;

Respondent's "Black and White Ointment" is not a sure way to get rid of eczema;

Respondent's "Genuine Black and White Bleaching Cream" and "Golden Brown Beauty Ointment" do not whiten and lighten dark, blotchy skin almost overnight or permit any desired shade to be retained, without injury to the skin; and

Other cosmetics and toilet preparations of respondent are not efficacious in the restoration and treatment of the hair and skin and are injurious to the scalp and skin.

PAR. 5. A substantial portion of the purchasing public prefer to make purchases direct from the manufacturer of the products being purchased, believing that they thereby eliminate from the retail cost of the articles purchased the so-called middleman's profit and that they secure superior quality in dealing direct with the manufacturer rather than a selling agency or middleman.

A substantial portion of the purchasing public have expressed, and actually have, a preference for purchasing articles, such as wigs made from hair, that have been imported from France, believing that wigs and other articles made from hair that are imported from France are of superior quality to those made or manufactured in the United States.

PAR. 6. There are among the competitors of the respondent many who actually manufacture the various hair goods, cosmetics, and toilet preparations sold by them and who truthfully represent themselves to be the manufacturer of said products. Likewise, many of the respondent's competitors do not manufacture the various hair goods, cosmetics, and toilet preparations distributed and sold by them and do not, in any way, represent themselves to be the manufacturers thereof.

Many of the respondent's competitors actually import from France certain articles such as wigs made from hair and truthfully represent that said wigs are imported from France. Likewise, many of respondent's competitors do not import such articles but either manufacture them in the United States or purchase them from those who do manufacture said articles in the United States and do not, in any manner, represent that said articles are imported from France or any other foreign country.

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Many of respondent's competitors who sell hair goods, cosmetics, and toilet preparations do not, through advertisements or labels or any way whatever, misrepresent the benefits that may be reasonably expected to accrue to the user of the products sold by them and said competitors truthfully advertise and label said products and truthfully represent the benefits that may be reasonably expected to be obtained after a use thereof.

PAR. 7. The use by the respondent of the word "Manufacturing" in his trade name and the use of the various representations set out in paragraph 3 in describing the products sold by him or in designating the efficacy of said products for their intended use, through advertisements, circulars, pamphlets, catalogues, and other advertising literature, in offering for sale and selling the products so advertised, was, and is, calculated to, and had, and now has, the tendency and capacity to, and did, and now does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief: (1) That the respondent owns, operates, and controls a manufacturing plant for the manufacture of the various hair goods, cosmetics and toilet preparations sold by him; (2) that when they purchase products sold by the respondent, they are dealing directly with the factory and are securing for themselves the advantages of closer prices and superior quality as well as eliminating the middleman; (3) that respondent actually imports certain of the hair goods sold by him from France; and (4) that the various products sold by him will actually accomplish the results represented or claimed by the respondent, as set out in paragraph 3 hereof, upon the use of said products by the purchasers thereof. As a direct consequence of these mistaken and erroneous beliefs, induced by the acts, practices, and representations of the respondent, as hereinabove outlined, a substantial number of the purchasing public have purchased a substantial volume of the products sold by the respondent with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products; or in the business of manufacturing, distributing, and selling similar products; or in the business of importing, distributing, and selling similar products, all of which said competitors truthfully advertise and represent the quality, character and nature of their products. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The acts, practices and representations of the respondent hereinabove set forth are all to the injury and prejudice of the pub-

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lic and the competitors of the respondent, 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 February 18, 1936, issued and served its complaint in this proceeding upon respondent, Gustave Goldstein, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, the respondent filed an answer thereto wherein and whereby he states that he desires to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that he admits all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure the Commission may make, issue and serve upon respondent, findings of fact, and an order to cease and desist from the violations of law charged in the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Gustave Goldstein, trading as Humania Hair & Specialty Mfg. Co., for more than two years last past having his principal office and place of business at 10-12 East 23rd St., New York, N. Y., has been engaged in the sale of hair goods, cosmetics, and toilet preparations, selling his merchandise in many States of the United States. When sold, the respondent mails or ships his merchandise from his place of business in New York City to purchasers located in the said State of New York and some located in various other States.

PAR. 2. For more than two years last past the respondent has been selling his merchandise in substantial competition with other business concerns selling similar merchandise at wholesale and retail, in interstate commerce, in stores; by catalogues circulated throughout the United States; and by various other forms of advertising.

PAR. 3. The respondent, in soliciting the sale of and selling his merchandise in interstate commerce, has represented and does now

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represent in and by pamphlets, catalogues, and other advertisements, circulated generally throughout the United States, and by labels attached to respondent's merchandise:

That respondent is a manufacturer of hair and specialty goods;

That respondent is an importer of hair goods;

That continued use of respondent's "Requas Ear Oil" will bring relief for deafness;

That respondent's "Magic Shaving Powder" does not affect the growth of hair and does not injure the skin;

That respondent's "LA-EM-STRAIT" and "Madam Walker's Hair Grower" prevent dandruff, falling hair and promote hair growth;

That respondent's "High Brown Hair Grower" is a combination hair grower and straightener;

That respondent's "Black and White Hair Grower" makes harsh, stubborn, nappy hair soft and silky.

That respondent's "High Brown Temple Oil" promotes the growth of hair on the temple;

That respondent's "Herolin" makes kinky, nappy or coarse hair soft, glossy, lustrous, long and straight;

That respondent's "Kongolene" positively straightens the hair;

That respondent's "Madam Walker's Temple Grower" will cause the hair to grow on bald spots;

That respondent's "Apex Pomade" has never failed to grow hair and is positively guaranteed to restore hair;

That respondent's "Moorish Straight Black" will instantly restore white and gray hair to a lustrous jet black and straighten it at the same time;

That respondent's "RO-ZOL FACE BLEACH" is an effective remedy for skin diseases;

That respondent's "High Brown Beauty Ointment", "Golden Brown Beauty Ointment" and "Dr. Ford Palmer's Skin Whitener Ointment" rid the face of blemishes, tetter rash, pimples, liver spots, freckles and blackheads;

That respondent's "Black and White Ointment" is a sure way to get rid of eczema;

That respondent's "Genuine Black and White Bleaching Cream" and "Golden Brown Beauty Ointment" whiten and lighten dark, blotchy skin almost overnight and permit any desired shade to be retained, without injury to the skin, and that other cosmetics and toilet preparations of respondent are efficacious in the restoration and treatment of the hair and skin, and are non-injurious to the scalp and skin.

PAR. 4 Respondent's statements, representations and advertisements by circulars, pamphlets, catalogues, and by labels attached to respondent's merchandise as set forth in paragraph 3 hereof are, and each of them is, not true and are, and each of them is, extravagant, false, misleading, and deceptive, in the following particulars:

The use of respondent's cosmetics and toilet preparations do not have the effects claimed as to either hair or skin.

Respondent is not a manufacturer of hair and specialty goods; and has, and has had, no factory which it owns, leases or controls, but, on the contrary, respondent purchases its merchandise, hereinabove specified, from various manufacturing companies and jobbers;

Respondent is not an importer of hair goods, but does in fact sell some imported hair goods which it buys in this country;

Continued use of respondent's "Requas Ear Oil" will not bring relief for deafness;

Respondent's "Magic Shaving Powder" does injure the skin;

Respondent's "LA-EM-STRAIT" and "Madam Walker's Hair Grower" do not prevent dandruff, falling hair or promote hair growth;

Respondent's "High Brown Hair Grower" is not a combination hair grower and straightener;

Respondent's "Black and White Hair Grower" does not make harsh, stubborn, nappy hair soft and silky;

Respondent's "High Brown Temple Oil" does not promote the growth of hair on the temple;

Respondent's "Herolin" does not make kinky, nappy or coarse hair soft, glossy, lustrous, long and straight;

Respondent's "Kongolene" does not positively straighten the hair;

Respondent's "Madam Walker's Temple Grower" will not cause the hair to grow on bald spots;

Respondent's "Apex Pomade" has failed to grow hair and to restore hair;

Respondent's "Moorish Straight Black" will not instantly restore white and gray hair to a lustrous jet black or straighten it at the same time;

Respondent's "RO-ZOL FACE BLEACH" is not an effective remedy for skin diseases;

Respondent's "High Brown Beauty Ointment," "Golden Brown Beauty Ointment" and "Dr. Ford Palmer's Skin Whitener Ointment" do not rid the face of blemishes, tetter rash, pimples, liver spots, freckles or blackheads;

Respondent's "Black and White Ointment" is not a sure way to get rid of eczema;

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Respondent's "Genuine Black and White Bleaching Cream" and "Golden Brown Beauty Ointment" do not whiten and lighten dark, blotchy skin almost overnight or permit any desired shade to be retained, without injury to the skin; and

Other cosmetics and toilet preparations of respondent are not efficacious in the restoration and treatment of the hair and skin and are injurious to the scalp and skin.

PAR. 5. A substantial portion of the purchasing public prefer to make purchases direct from the manufacturer of the products being purchased, believing that they thereby eliminate from the retail cost of the articles purchased the so-called middleman's profit and that they secure superior quality in dealing direct with the manufacturer rather than a selling agency or middleman.

A substantial portion of the purchasing public has expressed, and actually has, a preference for purchasing articles, such as wigs made from hair, that have been imported from France, believing that wigs and other articles made from hair that are imported from France are of superior quality to those made or manufactured in the United States.

PAR. 6. There are among the competitors of the respondent many who actually manufacture the various hair goods, cosmetics and toilet preparations sold by them and who truthfully represent themselves to be the manufacturer of said products. Likewise, many of the respondent's competitors do not manufacture the various hair goods, cosmetics, and toilet preparations distributed and sold by them and do not, in any way, represent themselves to be the manufacturers thereof.

Many of the respondent's competitors actually import from France certain articles such as wigs made from hair and truthfully represent that said wigs are imported from France. Likewise, many of the respondent's competitors do not import such articles but either manufacture them in the United States or purchase them from those who do manufacture said articles in the United States and do not, in any manner, represent that said articles are imported from France or any other foreign country.

Many of respondent's competitors who sell hair goods, cosmetics, and toilet preparations do not, through advertisements or labels or any way whatever, misrepresent the benefits that may be reasonably expected to accrue to the user of the products sold by them and said competitors truthfully advertise and label said products and truthfully represent the benefits that may be reasonably expected to be obtained after a use thereof.

PAR. 7. The use by the respondent of the word "Manufacturing" in his trade name and the use of the various representations set out in paragraph 3 in describing the products sold by him or in designating the efficacy of said products for their intended use, through advertisements, circulars, pamphlets, catalogues, and other advertising literature, in offering for sale and selling the products so advertised, was, and is, calculated to, and had, and now has, the tendency and capacity to, and did, and now does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief: (1) That the respondent owns, operates, and controls a manufacturing plant for the manufacture of the various hair goods, cosmetics, and toilet preparations sold by him; (2) that when they purchase products sold by the respondent, they are dealing directly with the factory and are securing for themselves the advantages of closer prices and superior quality as well as eliminating the middleman; (3) that respondent actually imports certain of the hair goods sold by him from France; and (4) that the various products sold by him will actually accomplish the results represented or claimed by the respondent, as set out in paragraph 3 hereof, upon the use of said products by the purchasers thereof. As a direct consequence of these mistaken and erroneous beliefs, induced by the acts, practices, and representations of the respondent, as hereinabove outlined, a substantial number of the purchasing public has purchased a substantial volume of the products sold by the respondent with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products; or in the business of manufacturing, distributing, and selling similar products; or in the business of importing, distributing, and selling similar products, all of which said competitors truthfully advertise and represent the quality, character, and nature of their products. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Gustave Goldstein, trading as Humania Hair & Specialty Mfg. Co., 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, 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 thereto, wherein and whereby he states that he desires to waive hearing on the charges set forth in the complaint; and not to contest the proceeding; that he admits all of the material allegations of the complaint to be true, and that without further evidence, or other intervening procedure the Commission may make, issue and serve upon respondent, findings of fact, and an order to cease and desist from the violations of law charged in the complaint, 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, Gustave Goldstein, trading as Humania Hair & Specialty Mfg. Co., his representatives, agents, and employees in connection with the advertising, offering for sale and sale in interstate commerce, or in the District of Columbia, of hair goods, cosmetics, or toilet preparations by pamphlets, catalogues, and other advertisements, or by labels attached to respondent's said merchandise, do forthwith cease and desist from representing:

- (1) That respondent is a manufacturer of hair and specialty goods;
- (2) That respondent is an importer of hair goods;
- (3) That continued use of respondent's "Requas Ear Oil" will bring relief for deafness;
- (4) That respondent's "Magic Shaving Powder" does not effect the growth of hair and does not injure the skin;
- (5) That respondent's "LA-EM-STRAIT" and "Madam Walker's Hair Grower" prevent dandruff, falling hair and promote hair growth;
- (6) That respondent's "High Brown Hair Grower" is a combination hair grower and straightener;
- (7) That respondent's "Black and White Hair Grower" makes harsh, stubborn, nappy hair soft and silky;
- (8) That respondent's "High Brown Temple Oil" promotes the growth of hair on the temple;
- (9) That respondent's "Herolin" makes kinky, nappy or coarse hair soft, glossy, lustrous, long and straight;
- (10) That respondent's "Kongolene" positively straightens the hair;

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(11) That respondent's "Madam Walker's Temple Grower" will cause the hair to grow on bald spots;

(12) That respondent's "Apex Pomade" has never failed to grow hair and is positively guaranteed to restore hair;

(13) That respondent's "Moorish Straight Black" will instantly restore white and gray hair to a lustrous jet black and straighten it at the same time;

(14) That respondent's "RO-ZOL FACE BLEACH" is an effective remedy for skin diseases;

(15) That respondent's "High Brown Beauty Ointment", "Golden Brown Beauty Ointment" and "Dr. Ford Palmer's Skin Whitener Ointment" rid the face of blemishes, tetter rash, pimples, liver spots, freckles and blackheads;

(16) That respondent's "Black and White Ointment" is a sure way to get rid of eczema;

(17) That respondent's "Genuine Black and White Bleaching Cream" and "Golden Brown Beauty Ointment" whiten and lighten dark, blotchy skin almost overnight and permit any desired shade to be retained, without injury to the skin;

(18) And from making any other similar representations of like import or effect unless and until said representations are true in fact.

It is further ordered, That the 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
FRANCES BROWN, DOING BUSINESS AS AMERICAN
BANK MACHINERY COMPANY

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

Docket 2846. Complaint, June 19, 1936—Decision, Nov. 2, 1936

Where an individual engaged in the city of Philadelphia in repairing and rebuilding perforating and check endorsing machines, and in selling and supplying new parts therefor in connection therewith, in competition, among others, with three of the larger manufacturers of such machines, located in Philadelphia and Chicago, and the products of which had been widely sold and were in use by banks and others in various States, and which companies, in addition to manufacture and sale of their said products, also engaged in repairing and rebuilding all makes of such machines, and in connection therewith in installing and supplying new parts therefor—

- (a) Falsely represented, through salesmen or solicitors employed to solicit such work and the sale and supplying of new parts in connection therewith, and acting within the scope of their employment, that said individual represented one or the other of the two Chicago manufacturers and did all the repair work for one or the other, as the case might be, or that said two Chicago companies were out of business, and that one of said companies and said individual business were one and the same; facts being said individual was not in any manner directly or indirectly affiliated, or otherwise connected with, company in question, and said statements or representations were also otherwise false; and
- (b) Represented, as aforesaid, that it made and repaired the machines that were sold by said Philadelphia manufacturer, and that said individual was a member of the National Association of Manufacturers of the United States of America, and through letterheads had places of business in Chicago, Atlanta, and Philadelphia, and thereby imported and implied to the owners of such machines and to the general public that said individual owned, operated, maintained, and controlled a business of such proportion that it was necessary to have places of business as there set out; facts being said individual did not make machines sold by said Philadelphia company, and had only mailing addresses at Chicago and Atlanta locations, from which mail was sent and forwarded to said individual's sole and only place of business in Philadelphia;

With capacity and tendency to mislead and deceive owners of old machines in need of repair or new parts, and induce such owners to deliver the machines to said individual for such purposes, in the erroneous belief that said various statements, etc. were true, and particularly on account of their natural preference for dealing only with either the manufacturer or with any other large concern duly authorized by the manufacturer to do such repairing and rebuilding work; and with result that trade was unfairly diverted thereby to said individual from competitors, including said manufacturers who in nowise make such false and misleading statements and representations, but truthfully represent their status as manu-

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facturers or repairers, or both, of such machines; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

Howson & Howson, 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 Frances Brown, doing business under the trade name of American Bank Machinery Co., 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, Frances Brown, is an individual trading as American Bank Machinery Co., with her office and place of business at 4626 Lancaster Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the business of repairing and rebuilding perforating and check endorsing machines already in use, and in selling and supplying new parts therefor in connection therewith, causing such machines to be shipped by, and transported from, the owners thereof located in various States of the United States to respondent's said place of business located in the city of Philadelphia, in the State of Pennsylvania for the purpose of having such repairing and rebuilding work done thereon or the installing and supplying of new parts therein in connection therewith. In the course and conduct of her said business, as aforesaid, respondent is and has been in competition with corporations, partnerships, firms, and individuals engaged in the business of rebuilding and repairing, in interstate commerce, of old perforating and check endorsing machines and in selling and supplying new parts therefor in connection therewith.

PAR. 3. Among the larger manufacturers of perforating and check endorsing machines are the American Perforator Company and the Cummins Perforator Company, both of the city of Chicago, in the State of Illinois, and the National Perforator Company, Inc., of the city of Philadelphia, in the State of Pennsylvania. Their perforating

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and check endorsing machines have been widely sold and are in use by banks and others in various States of the United States. Each of these companies, in addition to manufacturing and selling machines, also does repairing and rebuilding of all makes of perforating and check endorsing machines, and in connection therewith installs and supplies new parts therefor. Respondent does not manufacture perforating or check endorsing machines, but is merely engaged in repairing and rebuilding machines made by other companies as heretofore alleged in paragraph 2 hereof.

PAR. 4. In the course and conduct of her business, as heretofore described and alleged in paragraph 2 hereof, the respondent, in soliciting orders for such repairing and rebuilding work and in soliciting the sale of parts to be installed in connection therewith, employed salesmen or solicitors who travelled in various States of the United States and solicited the work of repairing and rebuilding old perforating and check endorsing machines and the sale and supplying of new parts therefor in connection therewith; and in the course of such employment and acting within the scope of their employment, said salesmen or solicitors made the following statements and representations:

1. That respondent either represents the American Perforator Company or the Cummins Perforator Company;
2. That respondent does all of the repair work for the American Perforator Company or the Cummins Perforator Company;
3. That the American Perforator Company and the respondent are one and the same concern;
4. That the American Perforator Company and the Cummins Perforator Company were out of business; and
5. That the respondent manufactures and repairs machines that are sold by the National Perforator Company, Inc.

In addition to the foregoing, the respondent has represented and does represent to the said owners of old perforating and check endorsing machines and to the general public located in different States of the United States that she owns, operates, maintains, or controls a manufacturing establishment for the manufacture of such machines by carrying on her letterheads, distributed in interstate commerce, the following statements:

"MANUFACTURERS OF MACHINES FOR CANCELLING CHECKS AND VOUCHERS, RECEIPTING BILLS, IDENTIFYING POSTAGE STAMPS, DATING INCOMING MAIL, CHECK SIGNING AND ENDORSING MACHINES"

and also

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"MEMBER—NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES
OF AMERICA"

Said letterheads, so distributed in interstate commerce, also contain therein the following addresses of the respondent:

56 W. Washington St., CHICAGO, ILLINOIS
901-6 Wm. Oliver Bldg., ATLANTA, GEORGIA

and together therewith, and in larger type,

EASTERN SERVICE CENTER
4626 LANCASTER AVENUE
PHILADELPHIA PA.

all of which, when taken together, tended to import and imply, and does import and imply, to said owners of such perforating and check endorsing machines, and to the general public, that respondent was a manufacturing concern and that she owned, operated, maintained, and controlled a manufacturing plant or plants.

PAR. 5. In truth and in fact the said representations, statements and assertions heretofore described, alleged and set forth in paragraph 4 hereof are false, misleading, and deceptive in that respondent did not and does not represent either the American Perforator Company or the Cummins Perforator Company; did not and does not do the repair work for either the American Perforator Company or the Cummins Perforator Company; was not and is not one and the same concern with, or in any manner directly or indirectly affiliated or otherwise connected with, the American Perforator Company; did not and does not manufacture the machines sold by the National Perforator Company, Inc.; and when the American Perforator Company has not gone out of business, and is still so engaged. Further, said respondent does not, nor has she, owned, operated, maintained, or controlled any plant or factory for the manufacture of machines such as machines for cancelling checks and vouchers, receipting bills, identifying postage stamps, dating incoming mail, check signing and endorsing machines, or any other like or similar machines.

PAR. 6. Said statements, representations and assertions, as heretofore alleged and set forth in paragraph 4 hereof, have the capacity and tendency to mislead and deceive the owners of old perforating and check endorsing machines, already in use and in need of repair or the installation of new parts in connection therewith, and to induce them to deliver same to respondent for such purposes in and on account of the erroneous belief that they are true, and particularly so because of their natural preference to deal only with either the manufacturer or with any other large concern duly authorized by such manufacturer to do the work of repairing and rebuilding same.

PAR. 7. Among the competitors of the respondent, there are corporations, partnerships, firms, and individuals who are engaged in the same business as respondent, as heretofore alleged and described in paragraph 2 hereof, among them being the American Perforator Company, the Cummins Perforator Company and the National Perforator Company, Inc., who in nowise make the same or similar false and misleading statements and representations as are made by the respondent, as hereinabove described and set forth, but who truthfully represent their true status either as manufacturer or repairer, or both, of perforating and check endorsing machines. The aforesaid false representations and misleading statements made, and caused to be made, by respondent about her status as a manufacturer, and as to the status of said American Perforator Company, the Cummins Perforator Company, and the National Perforator Company, Inc., and about her relationship, connection and affiliation with each of said concerns, have the capacity and tendency to deceive and mislead owners of old perforating and check endorsing machines, causing them to deliver same to respondent for the purpose of repair and the installation of new parts in connection therewith; and thereby trade is unfairly diverted to respondent from her said competitors with the result that substantial injury has been and is being done by respondent to competition in commerce, as hereinabove set out.

PAR. 8. The acts and things done by respondent, as hereinabove alleged, described and set forth, are to the injury and prejudice of the public and to competitors of respondent, 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 June 1936, issued and served its complaint in this proceeding upon respondent, Frances Brown, doing business as American Bank Machinery Co., charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 21st day of October 1936, the respondent filed her answer, in which answer she admitted all the material allegations of the complaint to be true, save and except that in her said answer she alleged that in the year 1935, and at the time the complaint was issued herein and served on her, she

was manufacturing perforating and check endorsing machines, and stated that she waived hearings on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon her findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and make this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Frances Brown, is an individual trading as American Bank Machinery Co., with her office and place of business at 4626 Lancaster Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the business of repairing and rebuilding perforating and check endorsing machines already in use, and in selling and supplying new parts therefor in connection therewith, causing such machines to be shipped by, and transported from, the owners thereof located in various States of the United States to respondent's said place of business located in the city of Philadelphia, in the State of Pennsylvania for the purpose of having such repairing and rebuilding work done thereon or the installing and supplying of new parts therein in connection therewith. In the course and conduct of her said business, as aforesaid, respondent is and has been in competition with corporations, partnerships, firms, and individuals engaged in the business of rebuilding and repairing, in interstate commerce, of old perforating and check endorsing machines and in selling and supplying new parts therefor in connection therewith.

PAR. 3. Among the larger manufacturers of perforating and check endorsing machines are the American Perforator Company and the Cummins Perforator Company, both of the city of Chicago, in the State of Illinois, and the National Perforator Company, Inc., of the city of Philadelphia, in the State of Pennsylvania. Their perforating and check endorsing machines have been widely sold and are in use by banks and others in various States of the United States. Each of these companies, in addition to manufacturing and selling machines, also does repairing and rebuilding of all makes of perforating and check endorsing machines, and in connection therewith installs and supplies new parts therefor.

PAR. 4. In the course and conduct of her business, as heretofore described and alleged in paragraph 2 hereof, the respondent, in soliciting orders for such repairing and rebuilding work and in soliciting the sale of parts to be installed in connection therewith, employed salesmen or solicitors who travelled in various States of the United States and solicited the work of repairing and rebuilding old perforating and check endorsing machines and the sale and supplying of new parts therefor in connection therewith; and in the course of such employment and acting within the scope of their employment, said salesmen or solicitors made the following statements and representations:

1. That respondent either represents the American Perforator Company or the Cummins Perforator Company;
2. That respondent does all of the repair work for the American Perforator Company or the Cummins Perforator Company;
3. That the American Perforator Company and the respondent are one and the same concern;
4. That the American Perforator Company and the Cummins Perforator Company were out of business; and
5. That the respondent manufactures and repairs machines that are sold by the National Perforator Company, Inc.

In addition to the foregoing, the respondent has represented and does represent to the said owners of old perforating and check endorsing machines and to the general public located in different States of the United States that she was a member of National Association of Manufacturers of the United States of America, which is an organization composed of corporations, associations, individuals, and firms engaged in the manufacture of various commodities; and also in the letterheads of respondent which she distributed in interstate commerce, respondent represented that she had places of business at 56 WASHINGTON ST., CHICAGO, ILL.; 901-6 WILLIAM OLIVER BUILDING, ATLANTA, GA.; and EASTERN SERVICE CENTER, 4626 LANCASTER AVENUE, PHILADELPHIA, PA., which tended to import and imply, and does import and imply, to said owners of such perforating and check endorsing machines, and to the general public, that respondent owned, operated, maintained, and controlled a business of such proportion that it was necessary to have places of business in the locations in this paragraph heretofore set out.

PAR. 5. In truth and in fact the said representations, statements and assertions heretofore described, alleged and set forth in paragraph 4 hereof are false, misleading, and deceptive in that respondent did not and does not represent either the American Perforator Company or the Cummins Perforator Company; did not and does not do the

Findings

repair work for either the American Perforator Company or the Cummins Perforator Company; was not and is not one and the same concern with, or in any manner directly or indirectly affiliated or otherwise connected with, the American Perforator Company; did not and does not manufacture the machines sold by the National Perforator Company, Inc.; and in that the American Perforator Company has not gone out of business but is still so engaged. In truth and in fact, the respondent has not, nor has she had, a place of business at 56 West Washington St., Chicago, Ill., nor in Oliver Building, Atlanta, Ga., nor elsewhere in said cities, but, to the contrary, for a period of time she did have mailing addresses at said location in Chicago and in Atlanta where mail would be sent and then forwarded to her sole and only place of business at 4626 Lancaster Avenue, Philadelphia, Pa.

PAR. 6. Said statements, representations and assertions, as heretofore alleged and set forth in paragraph 4 hereof, have the capacity and tendency to mislead and deceive the owners of old perforating and check endorsing machines, already in use and in need of repair or the installation of new parts in connection therewith, and to induce them to deliver same to respondent for such purposes in and on account of the erroneous belief that they are true, and particularly so because of their natural preference to deal only with either the manufacturer or with any other large concern duly authorized by such manufacturer to do the work of repairing and rebuilding same.

PAR. 7. Among the competitors of the respondent, there are corporations, partnerships, firms, and individuals who are engaged in the same business as respondent, as heretofore alleged and described in paragraph 2 hereof, among them being the American Perforator Company, the Cummins Perforator Company and the National Perforator Company, Inc., who in nowise make the same or similar false and misleading statements and representations as are made by the respondent, as hereinabove described and set forth, but who truthfully represent their true status either as manufacturer or repairer, or both, of perforating and check endorsing machines. The aforesaid false representations and misleading statements made, and caused to be made, by respondent about her status as a manufacturer, and as to the status of said American Perforator Company, the Cummins Perforator Company, and the National Perforator Company, Inc., and about her relationship, connection, and affiliation with each of said concerns, have the capacity and tendency to deceive and mislead owners of old perforating and check endorsing machines, causing them to deliver same to respondent for the purpose of repair and the installation of new parts in connection therewith; and thereby

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trade is unfairly diverted to respondent from her said competitors with the result that substantial injury has been and is being done by respondent to competition in commerce, as hereinabove set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Frances Brown, doing business as American Bank Machinery Co., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, save and except that in her answer she alleges that in the year 1935 and at the time the complaint was issued herein and served on her, she was manufacturing perforating and check endorsing machines, and states that she waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon her findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Frances Brown, as an individual and under her trade name, American Bank Machinery Co., or under any other trade name, her representatives, agents and employees, in connection with the soliciting, in interstate commerce, of business of repairing and rebuilding perforating and check endorsing machines already in use and in selling, offering for sale and supplying, in interstate commerce or in the District of Columbia, new parts for use in connection with said perforating and check endorsing machines, do forthwith cease and desist from representing:

(a) That respondent either represents the American Perforator Co. or the Cummins Perforator Co.;

(b) That respondent does all of the repair work for the American Perforator Co. or the Cummins Perforator Co.;

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(c) That the American Perforator Co. and the respondent are one and the same concern;

(d) That the American Perforator Co. and the Cummins Perforator Co. were, or are, out of business;

(e) That respondent is a member of National Association of Manufacturers of the United States of America, unless and until she actually becomes such a member;

(f) That respondent has places of business at 56 West Washington St., Chicago, Illinois; 901-6 William Oliver Building, Atlanta, Georgia, or elsewhere in said cities of Chicago, Ill., and Atlanta, Ga., or in any other place or places unless in truth and in fact she actually does have in Chicago, Atlanta, or such other represented city, places of business other than mailing addresses.

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

Complaint

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IN THE MATTER OF
THE JOHN J. McCANN COMPANY

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

Docket 2926. Complaint, Sept. 22, 1936—Decision, Nov. 2, 1936

Where a corporation engaged in manufacture of artificial limb appliances, including stump socks, as to which there is a marked preference for articles composed of wool, safe from attack by moths, and capable of great durability—

- (a) Represented and advertised that its "Comfort Stump Socks, used properly, should literally never wear out," facts being that while said products, used interchangeably with a reasonable number of others, might remain serviceable for a period of a year or longer, they were susceptible to ordinary wear and tear, and would not last indefinitely, and would wear out;
- (b) Represented and advertised, among other things, that "If any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm," and that said sock had been mothproofed, and that thereafter all such socks would be insured against moth damage for two years from date of purchase by a named insurance company, and that any socks thus damaged within said period would be replaced by said company free, and that such was its method of denying the charge that its said socks were not mothproofed; facts being they were not impervious to such damage, and neither retailers nor members of purchasing and consuming public were protected by insurance, as aforesaid, for two years, or any other period;

With capacity and tendency to deceive and mislead ultimate purchasers into buying such socks from it as and for articles which will last indefinitely and which have been so treated as to render same entirely impervious to moth damage, and which are further insured against such damage, as above set forth, and to mislead and deceive retailers and consuming public so as to induce purchase of aforesaid product in preference to that of other manufacturers, or to pay a higher price therefor than would have been paid but for reliance upon aforesaid representations; and with effect of unfairly diverting trade from competitors engaged in sale of such socks, and who truthfully represent the wearing qualities of their products, their ability to withstand moth-damage, and extent to which purchasers are insured, if at all, against such damage; to the substantial injury of competition in commerce:

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

Mr. James M. Hammond 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 John

J. McCann Company, a corporation, hereinafter referred to as the respondent, has been and 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. The respondent, The John J. McCann Company, is a corporation organized and existing pursuant to the laws of the State of New Jersey, having its office and principal place of business at 454 Lawrence Street, Burlington, N. J. It is now, and has been, for more than one year last past, engaged in the business of manufacturing, among other artificial limb appliances, an article known as "Stump Socks", and of shipping said product, when sold, to the purchasers thereof, some located in the State of New Jersey, and others located in various other States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in the aforesaid stump socks. In the course and conduct of its business the respondent is now, and has been, in substantial competition with other corporations, and with partnerships and individuals likewise engaged in the sale of stump socks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. A stump sock is an article used by persons who have suffered the amputation of a limb, to cover the stump in order to ease the pressure or friction caused by attaching an artificial appliance. These stump socks are generally made from a durable but soft material, and freedom from seams is a highly desirable feature. Since wool is usually the principal article used in their manufacture, ability to withstand damage or destruction by moths is also a highly important feature to both retail dealers who carry the same in stock and to the purchasing public. This marked preference on the part of consumers for a soft, durable, seamless and moth-proof stump covering has been, and is, advertised and exploited by the respondent herein. Respondent markets its stump socks under the name "Comfort Stump Socks" which name is printed on the containers in which the said stump socks are sold, on tags affixed to the same, and on its letterheads, literature and other advertising matter.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and in selling its stump socks in commerce as herein set out, states in its correspondence, advertisements, or trade literature, or on its labels and tags, among other things, that:

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One of the most important features of the Comfort Stump Sock is the "finish", which refers particularly to the shaping of the bottom. Until this new finish was developed and patented for exclusive use in Comfort Stump Socks, it was difficult to provide a bottom that was both strong and smooth. The new finish, being seamless is just as smooth as the previous finish of Comfort Stump Socks and by actual tests it doubles the strength just where the greatest strain comes.

Comfort Stump Socks, used properly, should literally never wear out.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public, that the respondent's stump socks are, in fact, seamless, and will withstand ordinary wear and tear indefinitely.

In truth and in fact, respondent's stump socks are not seamless and do have seams in the enclosed end or bottom thereof. Said stump socks will not wear indefinitely, but have an average life, under ordinary circumstances, of approximately one year.

PAR. 4. In the course and conduct of its business, as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and in selling its stump socks in commerce, as herein set out, states in its correspondence, advertisements or trade literature, or on its labels and tags, among other things that:

Now, if any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm.

This Comfort Stump Sock has been moth proofed.

Hereafter, All Wool Comfort Stump Socks will be insured against damage by moths for a period of two years from the date of purchase, by the American Eagle Insurance Co.

Any All Wool Comfort Stump Socks damaged by moth within two years from the date of sale will be replaced by the American Eagle Insurance Co., free of charge.

This is our method of denying the charge that All Wool Comfort Stump Socks are not moth-proof.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public, that the respondent's stump socks are, in fact, moth-proof, and that moths do die when they come in contact therewith before they can do any harm, and that the said stump socks are insured for a period of two years after purchase by a reliable insurance company.

In truth and in fact, respondent's stump socks are not moth-proof and are, in fact, susceptible of consumption or damage, in whole or in part, by moths, and retail dealers and other purchasers of respondent's said stump socks are not protected from damage from moths by insurance issued by the American Eagle Insurance Company, the American Eagle Fire Insurance Company, or any other insurance company, or companies, and such moth insurance, if any, only covers

said stump socks while they remain in the possession of the respondent company.

PAR. 5. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other corporations, firms, partnerships, and individuals who do sell stump socks in interstate commerce, who do not misrepresent their product to be "seamless", or to "literally never wear out", or that the same have been "moth-proofed" or that the purchasers thereof are insured against damage by moths for two years, or any other time, and who do not in any manner misrepresent the character or quality of their product.

PAR. 6. The acts and practices of respondent in falsely representing, advertising, marking, and branding its products or falsely marking, branding or representing in its circulars or advertising that the enclosed ends or feet of its stump socks are "seamless"; that they "should literally never wear out"; that they have been "moth-proofed"; or that a moth "will die after coming in contact therewith before he can do any harm"; or that the purchasing public or the retail trade is insured against damage by moths for a period of two years, or any other period, are all, or any of such or similar representations, calculated to mislead and deceive, and have, and have had, the capacity, tendency and effect of misleading and deceiving, and have misled and deceived, a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of respondent's stump socks in reliance on said representations. Respondent has also placed in the hands of wholesalers, jobbers, and retailers, the means of making false and misleading representations as above described to the purchasing public, by which means, or any of them, it has increased its own sales of said stump socks, so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other manufacturers, merchants, or dealers, the true nature of which is honestly stated.

As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of similar stump socks who truthfully represent their respective products. Further, as a result thereof, substantial injury has been and is being done by respondent to the purchasing public and to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition 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."

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 September 22, 1936 issued, and on September 23, 1936 served, its complaint in this proceeding upon the respondent, The John J. McCann Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of the complaint to be true, with the exception of the allegation contained in said complaint to the effect that respondent's stump socks are not seamless, and waiving the taking of further evidence, and all other intervening procedure, in reference to the allegations so admitted to be true, which substituted answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substituted answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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, The John J. McCann Company, is a corporation organized and existing pursuant to the laws of the State of New Jersey, having its office and principal place of business at 454 Lawrence St., Burlington, N. J. It is now, and has been, for more than one year last past, engaged in the business of manufacturing, among other artificial limb appliances, an article known as "stump socks", and of shipping said product, when sold, to the purchasers thereof, some located in the State of New Jersey, and others located in various other States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in the aforesaid stump socks. In the course and conduct of its business the respondent is now, and has been, in substantial competition with other corporations, and with partnerships and

individuals likewise engaged in the sale of stump socks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. A stump sock is an article used by persons who have suffered the amputation of a limb to cover the stump, in order to ease the pressure or friction caused by attaching an artificial appliance. These stump socks are made from soft material and are generally composed of wool. Because of this fact, the ability of the article to withstand damage or destruction by moths is a highly important feature to both retail dealers, who carry the same in stock, and to the purchasing public. This marked preference on the part of consumers for a stump sock composed of a woolen fabric safe from attack by moths and capable of great durability has been, and is, advertised and exploited by the respondent herein. The respondent markets its stump socks under the name "Comfort Stump Socks", which name is printed on the containers in which the said stump socks are sold, on tags affixed to the same, and on its letterheads, literature, and other advertising matter.

PAR. 3. In soliciting the sale of and in selling its stump socks in commerce as herein set out, respondent states in its correspondence, advertisements, or trade literature, or on its labels and tags, among other things, that said stump socks are seamless. Respondent's stump socks are, in fact, seamless.

PAR. 4. In soliciting the sale of and in selling its said stump socks in commerce, the respondent has also advertised and represented, among other things, that:

Comfort Stump Socks, used properly, should literally never wear out.

Respondent's stump socks are susceptible to ordinary wear and tear, will not last indefinitely, and will wear out; but when used interchangeably with a reasonable number of other stump socks may remain serviceable for a period of one year or longer.

PAR. 5. In soliciting the sale of and in selling its said stump socks in commerce, respondent has also advertised and represented, among other things, that:

Now, if any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm.

This Comfort Stump Sock has been mothproofed.

Hereafter, All Wool Comfort Stump Socks will be insured against damage by moths for a period of two years from the date of purchase, by the American Eagle Insurance Company.

Any All Wool Comfort Stump Socks damaged by moth within two years from the date of sale will be replaced by the American Eagle Insurance Co., free of charge.

This is not our method of denying the charge that All Wool Comfort Stump Socks are not mothproofed.

The use by the respondent of these representations has a tendency and capacity to, and does create the impression and belief among the purchasing public that moths will not attack respondent's stump socks and that they are impervious to damage in that manner and that, should any stump sock purchased by a retailer or by a member of the public become in any way damaged by moths within two years after purchase, that the same will be replaced free of charge by the American Eagle Insurance Company or some other insurance company.

Respondent's said stump socks are not impervious to damage by moths and neither retail merchants nor members of the purchasing and consuming public are protected by insurance issued by the American Eagle Insurance Company, or any other insurance company, against damage by moths for two years after purchase, or for any other period of time.

PAR. 6. The use by respondent of the aforesaid representations, as herein related, are false and misleading and have the capacity and tendency to deceive and may deceive and mislead ultimate purchasers into buying stump socks from respondent in the belief that they are purchasing an article which will not wear out and which will last indefinitely, and which has been treated in such a manner as to render the same entirely impervious to damage by moths, and that the said stump socks so purchased are insured against damage by moths by the American Eagle Insurance Company, or other insurance company, free of charge, for a period of two years following purchase of the same. These representations mislead and deceive or may mislead and deceive retail merchants and the consuming public so as to induce them to purchase respondent's product in preference to the products of other manufacturers of stump socks or to pay a higher or greater price therefor than would have been paid had not the purchase been made in reliance upon these representations.

PAR. 7. The use by respondent of the aforesaid practices has the tendency and capacity to, and does, unfairly divert trade from competitors engaged in selling stump socks in commerce between and among the various States of the United States who truthfully represent the wearing qualities of their products, their ability to withstand damage from moths, and the extent to which purchasers are insured, if at all, against damage by moths, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, The John J. McCann Company, except as to the matter set out in paragraph 3 above, are to the prejudice of the public and of respondent's com-

petitors, and constitute unfair methods of competition in 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 and the answer filed herein on October 26, 1936, by respondent, admitting all the material allegations of the complaint to be true with the exception of the allegation contained in said complaint to the effect that respondent's stump socks are not seamless, and waiving the taking of further evidence and all other intervening procedure as to said admitted allegations, 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, The John J. McCann Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its stump socks in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. Through the use of the phrase "literally never wear out", or any other word or words of similar import or effect that the life of said stump socks is indefinite and that they are impervious to ordinary wear and tear;

2. That said stump socks are mothproof or that a moth, coming in contact with the same will die before it can do any harm; or that the said stump socks are impervious to damage by moths;

3. That purchasers of the said stump socks are insured against damage by moths for a period of two years or for any other period of time from the date of purchase, by the American Eagle Insurance Company, or any other insurance company, unless and until retail dealers and purchasers or consumers of said stump socks are so insured.

It is further ordered, That the complaint in this proceeding be, and the same is hereby dismissed insofar as the same relates to an allegation contained therein to the effect that respondent's stump socks are not seamless.

It is further ordered, That the respondent shall, within 60 days from the date of the service upon it of this order, file with this Commission, its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF
SAVAGE CANDY COMPANY

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

Docket 2606. Complaint, Oct. 31, 1935—Decision, Nov. 3, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight goods," and "break and take" and "draw" or "deal" assortments, in which, as case might be, (1) chance selection of one of a number of penny pieces of uniform size and shape, enclosed, colored center of which differed from that of majority of said penny pieces, entitled purchaser to receive, without charge, one of larger pieces included therewith, and in which purchaser of last one of said penny pieces received as prize, box of candy; (2) chance selection depended upon concealed color of individually wrapped pieces of candy making up assortment; (3) identical assortments were sold with push cards and receipt of one of larger pieces included depended upon chance selection of certain numbers from 200-hole push card supplied therewith, and in which purchaser pushing last disk from card received box of candy prize; and, (4) assortment composed of candy bars and pound box of candy, in which so-called "Baseball" assortment, purchaser of a punch received, for five cents charged, from one to five candy bars, depending upon legend punched by chance from push card included, and box of candy was secured by last punch, as set forth by said cards' explanatory legends—

Sold said various assortments, with cards, to retailers, wholesalers, and jobbers knowingly assembled and packed for resale, without alteration, addition, or rearrangement, to consuming, purchasing public, by lot or chance, by retailers, which, as sellers of its said candy, included grocery, candy, and drug stores, stores in vicinity of schools, and, in some cases, cigar stores, and stores of which, in case of small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy, and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of becoming a winner, and sale of which "straight" goods candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of said gambling feature connected therewith;

With result that many competitors dealing in "straight goods" candy only, and who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in straight goods, and able to compete on even terms only

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by giving same or similar devices to retailers, sale of such refusing competitors "straight" goods candy showed continued decrease, some competitors began sale and distribution of candy to public by lot or chance to meet constant demand for candy thus sold, public and competitors were prejudiced and injured, and there was a restraint upon and a detriment to the freedom of fair competition in said industry, and violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 the Savage Candy Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition, in commerce, as "commerce" is defined in said act of Congress, 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 is a corporation organized under the laws of the State of Colorado, with its principal office and place of business in the city of Denver, State of Colorado. Respondent for several years last past has been engaged in the manufacture of candy and in the sale and distribution thereof through retail dealers located at points in several of the States of the United States and causes its said products when so sold to be transported from its principal place of business in the city of Denver, Colo., to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of its said business respondent is in competition with other corporations, and with individuals and partnerships engaged in the manufacture of candy 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 herein respondent sells and has sold to retail dealers various 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.

Certain of said packages are hereinafter described for the purpose of showing the details of the methods used by respondent, but this list is not all inclusive of the various sales plans which respondent has been or is using to distribute candy by lot or chance.

(a) Several of the said assortments are composed of a number of pieces of chocolate covered candy of uniform size and shape together with a number of larger pieces of candy and a small box of candy, the larger pieces of candy and the small package of candy are to be given as prizes to purchasers of said chocolate covered candies of uniform size and shape in the following manner:

The majority of said chocolate covered pieces of candy are the same color throughout but a few of said pieces of chocolate covered candy have centers of a different color. The color of the center of these pieces of chocolate covered candy is effectively concealed from the prospective purchasers until a selection or purchase has been made and the piece of candy broken open. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchasers who procure one of the said pieces of chocolate covered candy having a center of a different color than the majority are entitled to receive and are to be given free of charge one of said larger pieces of candy. The purchaser of the last piece of candy of uniform size and shape in said assortment is to be given as a prize the small package of candy. The aforesaid purchasers of said candies who procure a piece of chocolate covered candy having a center colored differently from the majority thus receive one of said larger pieces of candy wholly by lot or chance.

(b) Respondent also manufactures and distributes several assortments of candy identical with the assortment described above in subparagraph (a) and includes therewith a device commonly called a push card. Said push card has 200 partially perforated disks and when a disk is pushed or separated from the card a number is disclosed, these numbers are effectively concealed from the customer until such disk is pushed or separated from the card. The numbers run from 1 to 200 but are not arranged in numerical sequence. The said push card bears legends or statements to the effect that certain numbers are prize winning numbers and the purchaser or customer procuring one of these numbers is entitled to one of the larger boxes of candy. Each purchaser of one of the pieces of chocolate covered candy of uniform size and shape is entitled to push one of the disks from the card and if such purchaser obtains one of the prize winning numbers, such purchaser is entitled to receive and is to be given free of charge one of the larger pieces of candy in said assortment.

The purchaser pushing the last disk from the card is to be given, as a prize, the small package of candy. The aforesaid purchasers of said candies of uniform size and shape who push one of the prize winning numbers from the said push card thus procure one of the said larger pieces of candy wholly by lot or chance.

(c) Another assortment distributed by the respondent is composed of a number of bars of candy and a 1 lb. box of candy together with a device commonly called a push card. The bars of candy and the 1 lb. box of candy are to be distributed to purchasers in the following manner:

Sales are 5¢ each and when a push is made, a legend is disclosed. The push card has printed at the top thereof a statement or statements showing the number of bars which the purchaser is entitled to receive upon obtaining particular legends. Some of the legends entitle the purchaser to three bars of candy and certain legends entitle the purchaser to two bars of candy. All other legends entitle the purchaser to one bar of candy. The last purchaser from said assortment is entitled to receive the 1 lb. package of candy. Thus all purchasers receive one bar of candy but certain purchasers depending upon the legend printed on the push selected by them receive more than one bar of candy or the 1 lb. box of candy. The legends on said disks are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The additional bars of candy and the 1 lb. box of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(d) The respondent also manufactures and distributes various assortments composed of a number of bars of candy and other articles of merchandise together with a device commonly called a punch board. These assortments vary with regard to the number of bars of candy, the number of articles of merchandise and the number of holes or punches in the said punch board. Sales are 5¢ each and when a punch is made a number is disclosed. The punch board bears statements informing the purchaser or prospective purchaser as to which numbers receive a bar of candy and which numbers receive in addition one of the other articles of merchandise. The numbers of said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The articles of merchandise included in said assortments of candy are thus distributed to purchasers of punches from said board wholly by lot or chance.

PAR. 3. The retail dealers to whom respondent sells its assortments expose said assortments for sale and sell said candy to the purchas-

ing 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 sales plans hereinabove set forth as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors. The sales plans and methods of respondent as above described also appeal to the gambling instinct of the consumers of candy and said candies are sold to the consuming public by means of such appeal rather than on the basis of merit or value and a large number of the ultimate purchasers of respondent's said candies are minors.

PAR. 4. The sale of candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure additional or larger pieces of candy or packages of candy or an article of merchandise in the manner alleged. Such games of chance and the sale along with the sale of such candy of such chance to procure such additional or larger pieces of candy or packages of candy or other articles of merchandise in the manner alleged are contrary to the established public policy of the several States of the United States 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, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged or 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 additional or larger pieces of candy or other articles of merchandise by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 respondent who do not use the same or equivalent methods. 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 methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from

said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods 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 equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods, 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 methods, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on October 31, 1935, issued and served a complaint upon the respondent, Savage Candy Company, charging that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of the complaint, notwithstanding the failure of the respondent to file answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and evidence were duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondent, although an opportunity was afforded it so to do. Thereafter, the proceeding came regularly on for final hearing before the Commission on said complaint and the testimony

and evidence in support thereof, and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Savage Candy Company, is a corporation organized under the laws of the State of Colorado, with its office and place of business in the city of Denver, Colo. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in Denver, Colo., and in the sale and distribution of said candies to retail dealers located in Wyoming, New Mexico, and Colorado, and to a few wholesale dealers and jobbers in the same States. It causes the said candy, when sold, to be shipped and transported from its principal place of business in Colorado into the States of Wyoming and New Mexico. 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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution of candy between and among the various States of the United States.

PAR. 2. Among the candies manufactured and distributed by respondent is an assortment containing a number of small pieces of candy of uniform size and shape, a number of larger pieces of candy, and a box of candy. The small pieces of candy are of uniform size and shape, and the majority thereof have centers of the same color, but a small number of said pieces of candy have centers of a different color. The purchaser who procures one of the small pieces of candy having a center colored differently from the majority is entitled to receive, and is to be given free of charge, one of the larger pieces of candy. The purchaser procuring the last piece of candy of uniform size and shape in said assortment is to receive a box of candy as a prize. The purchaser who procures one of the candies having a center of the color of the majority of the pieces of candy receives only that piece of candy for his money. The small pieces of candy of uniform size and shape retail at the price of 1¢ each, and the color of the center of the said pieces of candy is effectively concealed from the purchasers and prospective purchasers until a selection or purchase has been made and the particular piece broken open. The larger pieces of candy and the box of candy in said assortment are thus distributed to purchasers obtaining a small piece of candy of uniform size and shape of a particular colored center wholly by lot or chance.

The respondent has also manufactured and distributed an assortment involving the same principle, where the small pieces of candy are of different colors but are contained within wrappers and the color of the particular piece of candy cannot be ascertained until a selection and purchase had been made and the wrapper removed.

PAR. 3. Respondent also manufactures and distributes an assortment of candy identical with the assortment described above in paragraph 2, and includes therewith a device commonly called a push card. Said push card has 200 partially perforated disks and when a disk is pushed or separated from the card a number is disclosed. These numbers are effectively concealed from the customer until such disk is pushed or separated from the card. The numbers run from one to two hundred but are not arranged in numerical sequence. The push card bears legends or statements to the effect that certain numbers are prize-winning numbers, and the purchaser or customer procuring one of these numbers is entitled to one of the larger pieces of candy. Each purchaser of one of the pieces of small candies of uniform size and shape is entitled to push one of the disks from the card, and if such purchaser obtains one of the prize-winning numbers, such purchaser is entitled to receive, and is to be given free of charge, one of the larger pieces of candy in said assortment. The purchaser pushing the last disk from the card is to be given as the prize the box of candy. The larger pieces of candy and the box of candy contained in said assortment are thus distributed to purchasers of "pushes" wholly by lot or chance.

PAR. 4. Another assortment manufactured and distributed by respondent is composed of a number of bars of candy and a one pound box of candy, together with a device commonly called a push card. Sales are 5¢ each, and when a push is made from said card a legend is disclosed. The push card has printed at the top thereof statements showing the number of bars which the purchaser is entitled to receive upon obtaining particular legends, as follows:

5¢ a Play	BASEBALL	5¢ a Play
Every Play Receives One or More Candy Bars		
Home Run Receives.....		5 CANDY BARS
Three Bagger Receives.....		3 CANDY BARS
Two Bagger Receives.....		2 CANDY BARS
Stolen Base Receives.....		2 CANDY BARS
Sacrifice Hit Receives.....		2 CANDY BARS
Single Receives.....		2 CANDY BARS
Walk Receives.....		2 CANDY BARS
Hit by Pitcher Receives.....		2 CANDY BARS
All other Plays Receive.....		1 CANDY BAR
Last Play Receives.....		1 LB. CHOCOLATES

There are legends on the said disks corresponding to the legends shown at the top of the card, and the candy is distributed to the ultimate purchasers in accordance with the legends or statements shown on the said push card. The fact as to whether a purchaser receives more than one bar of candy or receives the one pound box of candy for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 5. The lottery or prize assortments described in paragraphs 2, 3, and 4 are generally referred to in the candy industry as "break and take," "draw," or "deal" assortments, and packages or assortments of candy without the gaming device or lottery features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight goods." These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 6. Numerous retail dealers purchase the assortments described in paragraphs 2, 3, and 4, above, direct 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 the candy contained in said packages is sold and distributed to the consuming public in the manner described.

PAR. 7. All sales made by respondent, whether to wholesale dealers and jobbers or to retail dealers, are absolute sales and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they are sold and may be sold by the retail dealers to the purchasing public in the manner described.

The respondent has knowledge that said assortments 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 without alteration, addition, or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 8. The sale and distribution of candy by the retailers by the methods described in paragraphs 2, 3, and 4, above, is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Respondent's candy is sold to the consuming public in grocery stores, candy stores, drug stores, stores in the vicinity of schools selling candy, and in some cases in cigar stores.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many competi-

tors regard such methods of sale and distribution as morally bad and as 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" or "draw" methods 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" show a continued decrease.

There is a 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 to respondent's 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. One of the principal demands in the trade for the "break and take" or "draw" or "deal" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of 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" or "draw" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight goods" candy, when the two types of assortments are displayed side by side. The sale and distribution of "break and take" or "draw" packages 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.

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PAR. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy, and who sell their "straight goods" candy in interstate commerce in competition with the "break and take" or "draw" or "deal" 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 connected with the "break and take," "draw," or "deal" candy.

PAR. 11. In addition to the assortments described in paragraphs 2, 3, and 4 herein, the respondent manufactures candy which it sells to retail dealers and wholesale dealers and jobbers without any lottery or chance features. The exact annual volume of respondent's business was not shown but an officer of the respondent testified, and the Commission finds, that the business of respondent is substantial, and that the major portion of respondent's business has been the sale and distribution of the various "break and take," "draw," or "deal" assortments.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraphs 2, 3, and 4 hereof, are contrary to public policy.

CONCLUSION

The practices of said respondent under the conditions and circumstances hereinbefore described 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, no answer having been filed by the respondent nor any testimony having been offered in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

It is ordered, That the respondent, Savage Candy Company, a corporation, its officers, agents, representatives, and employees, in the sale, offering for 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 retailers, 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 or which may be 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 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 and shape having centers of a different color, together with larger pieces of candy and a small box of candy, which said larger pieces of candy and small box of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a push card, for use, or which may be used, in distributing said candy to the public at retail.

(5) Furnishing to wholesale dealers and jobbers and retail dealers a device commonly called a push card, either with assortments of candy or candy products, or separately, and 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.

It is further ordered, That the respondent, Savage 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.

Complaint

23 F. T. C.

IN THE MATTER OF

J. R. STONE TRADING AS SPANISH DIAMOND CO.,
CHINESE RING CO., AND NATIONAL JEWELRY CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2866. Complaint, July 3, 1936—Decision, Nov. 3, 1936*

Where an individual, engaged in the sale of imitation and simulated diamonds and rings, and variously doing business as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co.; in advertising said products in newspapers and periodicals, and in booklets, testimonials, and other advertising literature—

- (a) Referred to said imitation and simulated diamonds as "gems" "which look like diamonds worth \$150.00" and other substantial amounts, and "cannot be told from the genuine costing many hundreds of dollars," and as "Spanish" or "Spanish Imitation," and as possessing "fire" and "flawless," and as "scientific reproductions of the genuine, which will wear a lifetime," and as "Spanish imported," or "Laboratory Made;" the facts being said diamonds were made of glass and other cheap compositions, did not baffle or deceive experts or have any such appearance, no such thing is known to the jewelry trade as a "Spanish" or "Spanish Imitation" diamond, they were not imported from Spain or "Laboratory Made," and said various representations were false;
- (b) Represented that his said ring mountings had a "Platinum Effect Finish" or were "White Gold-Appearing," or "Sterling," or "Chromium" reproductions of a \$300.00 diamond ring, and were finished in 18 Kt. white gold; the facts being said mountings were not finished with a material simulating platinum, and did not have any such appearance as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with the result that a number of the consuming public purchased a substantial volume of his said imitation and simulated diamonds and rings, and trade was unfairly diverted to him from those engaged in sale of diamonds and rings and who truthfully advertise their products; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. George Foulkes 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

Complaint

Federal Trade Commission, having reason to believe that J. R. Stone, an individual, trading as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co., 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, J. R. Stone, is an individual with his principal office and place of business located in the city of Wheeling, State of West Virginia. Respondent is now, and for more than five years last past has been, engaged in the business of selling imitation and simulated diamonds and rings which respondent distributes to purchasers, many of whom reside in States other than the State of West Virginia. When orders are received therefor they are filled by respondent by shipping said imitation and simulated diamonds and rings from the said city of Wheeling, West Virginia, into and through other States of the United States and in the District of Columbia, and there is now, and has been during the time hereinbefore mentioned, a constant current of trade and commerce in said imitation and simulated diamonds and rings so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, said respondent was, and is, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of diamonds and rings between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of said business, and for the purpose of inducing individuals to purchase said imitation and simulated diamonds and rings, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States. The advertising placed by respondent in newspapers, magazines, and periodicals is variously devised to show representations of diamond rings, and contains statements and representations, such as the following:

LOOKS \$250 FOR \$1.48

Beautiful Spanish

Imitation Diamond

Baffles Experts. White-Gold-Appearing Sterling. Ladies' or Gents', in Gift Box. SEND NO MONEY. Pay Postman \$1.48 plus postage. Money back if not delighted! State Size. Order Now! Address: SPANISH DIAMOND CO., Dept. 14, Wheeling, W. Va.

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Beautiful Life-Time White-Gold-Appearing Chromium Reproduction of a \$300 Diamond Ring. Baffles Experts. Ladies' or Gents' in Rich Gift Box. SEND NO MONEY. Pay Postman 99¢ plus postage (or, remit \$1 with order and we will pay postage). Money back if not delighted! Order at Once! SPANISH DIAMOND CO., Dept. 16, Wheeling, West Va.

FREE RING OFFER

To introduce our blue-white rainbow flash Gems, we will send free a 1 Kt. Spanish Imitation Diamond Ring (looks like \$150 stone), for this ad and 15¢ to help pay adv. and handling expense. National Jewelry Co., Dept. 25-D, Wheeling, West Va. (2 for 25¢)

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product. In all of his advertising literature, respondent represents, through statements and representations herein set out, and other statements of similar import and effect, that the sets or stones in said rings (1) are gems, (2) baffle and deceive experts, (3) look like diamonds worth \$250 or \$300 or \$150, (4) cannot be told from genuine diamonds costing many hundreds of dollars, (5) are "Spanish Diamonds" or "Spanish Imitation Diamonds", (6) do not lose their fire, (7) are flawless, (8) are scientific reproductions of genuine diamonds, (9) will wear a lifetime, (10) are Spanish imported gems, and (11) are "Laboratory Made".

Further, in his advertising literature, respondent represents, through statements and representations herein set out, and other statements of similar import and effect, that the ring mountings (1) have a "Platinum Effect Finish", (2) are "White Gold-Appearing Sterling", (3) are White Gold Appearing Chromium reproductions of a \$300 diamond ring, and (4) are finished in 18 Kt. White Gold.

PAR. 3. The representations made by respondent with respect to his product are grossly exaggerated, false, misleading, and untrue. In truth and in fact the sets or stones sold by respondent as aforesaid, are not gems but are made of glass and other cheap compositions, and said sets or stones do not baffle and deceive experts, nor have they the appearance of diamonds worth \$250 or \$300 or \$150, or of any other substantial amount. Said sets or stones can be easily distinguished from genuine diamonds costing many hundreds of dollars. Respondent's products are not "Spanish Diamonds" nor are they "Spanish Imitation Diamonds" in that no such thing as a Spanish or a Spanish Imitation diamond has any existence or is known by the jewelry trade. Respondent's imitation and simulated diamonds are not flawless, and being composed chiefly of glass do not possess any "fire" as the term is used in the jewelry trade. Said

sets or diamonds are not scientific reproductions of genuine diamonds, nor will they wear a lifetime, but are, as aforesaid, an ordinary glass product. Said products are not imported from Spain nor are they "laboratory made".

The representations made by respondent in connection with the sale of the ring mountings are also false, misleading, and untrue. Said ring mountings are not finished with a material simulating platinum, nor do they have the appearance of white gold or 18 kt. white gold. Said rings do not have the appearance of diamond rings worth \$300 or any other substantial amount.

PAR. 4. Each and all of the false and misleading statements and representations made by respondent in designating and describing the imitation and simulated diamonds, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale, and selling, his imitation and simulated diamonds and rings, have had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous belief induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's imitation and simulated diamonds and rings, with the result that trade has been unfairly diverted to respondent from individuals, firms, partnerships, and corporations likewise engaged in the business of selling diamonds and rings, and who truthfully advertise their products. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of respondent are each and all of them to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the 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 July 3, 1936, issued and served its complaint in this proceeding upon respondent J. R. Stone, an indi-

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vidual trading as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by respondent; and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, the right of counsel of the Commission and the respondent to file briefs and the presentation of arguments being expressly waived, and the Commission having duly considered the same, and being now 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. J. R. Stone, respondent herein, is an individual with his principal office and place of business located in the city of Wheeling, State of West Virginia. Respondent is now, and for more than five years last past has been, engaged in the business of selling imitation and simulated diamonds and rings which respondent distributes to purchasers, many of whom reside in States other than the State of West Virginia.

When respondent receives orders for said imitation and simulated diamonds and rings he fills same by shipping said diamonds and rings from the said city of Wheeling, West Virginia, into and through other States of the United States and in the District of Columbia, and there is now, and has been during the time hereinbefore mentioned, a constant current of trade and commerce in said imitation and simulated diamonds and rings so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, said respondent was, and is, in substantial competition with other individuals, firms, and partnerships, and corporations likewise engaged in the sale and distribution of diamonds and rings between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondent in the operation of his said business, and for the purpose of inducing individuals to purchase said imitation

and simulated diamonds and rings, has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States.

The advertising placed by respondent in newspapers, magazines, and periodicals is variously devised to show representations such as the following:

LOOKS \$250 FOR \$1.48
BEAUTIFUL SPANISH
Imitation Diamond

Baffles Experts. White-Gold-Appearing Sterling. Ladies' or Gents' in Gift Box. SEND NO MONEY. Pay Postman \$1.48 plus postage. Money back if not Delighted! State Size. Order Now!! Address: SPANISH DIAMOND CO., Dept. 14, Wheeling, W. Va..

Beautiful Life-Time White-Gold-Appearing Chromium Reproduction of a \$300 Diamond Ring. Baffles Experts. Ladies' or Gents' in Rich Gift Box. SEND NO MONEY. Pay Postman 99¢ plus postage (or, remit \$1 with order and we will pay postage). Money back if not Delighted! Order at Once! SPANISH DIAMOND CO., Dept. 16, Wheeling, West Va.

FREE RING OFFER

To introduce our blue-white rainbow flash Gems, we will send free a 1 kt. Spanish Imitation Diamond Ring (looks like \$150 stone), for this ad and 15¢ to help pay adv. and handling expense. National Jewelry Co., Dept. 25-D, Wheeling, West Va. (2 for 25¢)

The above statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product.

In all of his advertising literature, respondent represents, through statements and representations herein set out, and other statements of similar import and effect, that the sets or stones in said rings (1) are gems, (2) baffle and deceive experts, (3) look like diamonds worth \$250 or \$300 or \$150, (4) cannot be told from genuine diamonds costing many hundreds of dollars, (5) are "Spanish Diamonds" or "Spanish Imitation Diamonds", (6) do not lose their fire, (7) are flawless, (8) are scientific reproductions of genuine diamonds, (9) will wear a lifetime, (10) are Spanish imported gems, and (11) are "Laboratory Made".

Further, in his advertising literature, respondent represents, through statements and representations herein set out, and other statements of similar import and effect, that the ring mountings (1) have a "Platinum Effect Finish", (2) are "White Gold-Appearing Sterling", (3) are "White Gold-Appearing Chromium" reproductions of a \$300 diamond ring, and (4) are finished in "18 Kt. White Gold".

PAR. 3. The representations made by respondent with respect to his product are grossly exaggerated, false, misleading, and untrue.

In fact the sets or stones sold by respondent, as aforesaid, are not gems but are made of glass and other cheap compositions, and said sets or stones do not baffle and deceive experts, nor have they the appearance of diamonds worth \$250 or \$300 or \$150, or of any other substantial amount.

Respondent's sets or stones can be easily distinguished from genuine diamonds costing hundreds of dollars.

Respondent's products are not "Spanish Diamonds" nor are they "Spanish Imitation Diamonds" in that no such thing as a Spanish or a Spanish Imitation Diamond has any existence or is known by the jewelry trade.

Respondent's imitation and simulated diamonds are not flawless, and being composed chiefly of glass do not possess any "fire" as the term is used in the jewelry trade.

Respondent's sets or diamonds are not scientific reproductions of genuine diamonds, nor will they wear a lifetime, but are, as aforesaid, an ordinary glass product.

Said sets or diamonds are not imported from Spain and are not "laboratory made".

The representations made by respondent in connection with the sale of the ring mountings are also false, misleading, and untrue. Said ring mountings are not finished with a material simulating platinum, and do not have the appearance of white gold or 18 Kt. white gold. Said rings do not have the appearance of diamond rings worth \$300 or any other substantial amount.

PAR. 4. Each and all of the false and misleading statements and representations made by respondent in designating and describing the imitation and simulated diamonds, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale, and selling, his imitation and simulated diamonds and rings, have had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

Further, as a direct consequence of the mistaken and erroneous belief induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's imitation and simulated diamonds and rings, with the result that trade has been unfairly diverted to respondent from individuals, firms, partnerships, and corporations likewise engaged in the business of selling diamonds

and rings, and who truthfully advertise their products. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, J. R. Stone, an individual, trading as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the filing of briefs and oral arguments having been expressly waived by counsel for the Commission and by 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, J. R. Stone, an individual trading as Spanish Diamond Co., Chinese Ring Co., and National Jewelry Co., his officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of imitation and simulated diamonds and rings in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

(1) That his imitation simulated diamonds and rings are (a) gems, (b) baffle and deceive experts, (c) look like diamonds worth \$150, \$250 or \$300, or any other substantial amount of money, (d) cannot be told from genuine diamonds costing many hundreds of dollars, (e) are "Spanish Diamonds," or "Spanish Imitation Diamonds," (f) possess what is known in the jewelry trade as "fire," (g) are flawless, (h) are scientific reproductions of genuine diamonds, (i) will wear

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a lifetime, (j) are Spanish imported gems, (k) are "Laboratory Made."

(2) That his ring mountings (a) have a "Platinum Effect Finish," (b) are "White Gold-Appearing Sterling," (c) are "White Gold-Appearing Chromium" reproductions of a \$300 diamond ring, or reproductions of a diamond ring worth any substantial amount of money, (e) are finished in 18-carat white gold.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 2883. Complaint, July 28, 1936—Decision, Nov. 3, 1936

Where a corporation, engaged in the sale of a line of tonics, cosmetics, beauty and toilet preparations and lotions, commonly referred to as the "Ritz" and 'Charles of the Ritz' line, including "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence Cream Ritz," and "Eyelash Grower Ritz"—

- (a) Represented, in its booklet "Beauty in the Modern Mode," distributed in large numbers through its distributors, sales branches, and sales people, that said "Eye Lotion" and "Eye Cream," as the case might be, constituted a tonic and beautifier for the eyes, strengthening the eye nerves, etc. and keeping the eyes clear and sparkling, and that the latter nourished the delicate tissues about the eyes, banishing lines and preventing crow's feet; facts being the former was merely a lotion which could in no way influence the delicate nerves of the eye or relieve functional strain, latter did not nourish underlying tissues, and the "Eyelash Grower" did not promote growth of the lashes;
- (b) Represented that its "Scalp Food" promoted the growth of the hair, facts being it did not accomplish said purpose when the hair follicle or hair root was no longer present, and could not act as a nourishing scalp food when applied externally, except that to a certain degree it was absorbed by the skin, although it did not reach the blood stream; and
- (c) Represented that its said "Rejuvenescence Cream" was an organic compound made of substances extracted from living tissue, and that it supplied the precious youth-giving element essential to young skins, and that it was absorbed by the skin immediately, etc., and that its basic elements penetrated the derma or true skin, revived the tissues, and gave the skin new life and vitality; facts being that it was not such a compound, did not supply the skin with such elements, or act as above set forth, and said representations were false;

With the result that a substantial number of the consuming public purchased a substantial volume of said preparations, and thereby unfairly diverted a substantial volume of trade and business to it which would otherwise have gone to competitors who did not use such unfair methods;

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mock & Blum, of New York City, for respondent.

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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 Charles of the Ritz Distributors Corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as defined by 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, Charles of the Ritz Distributors Corporation, is a corporation duly organized and existing under the laws of the State of New York. Respondent's plant, office, and principal place of business is located at 9-11 University Place in New York City, N. Y. Respondent is now and for some time has been engaged in the business of manufacturing or compounding a line of tonics, cosmetics, beauty and toilet preparations, and lotions, commonly referred to as the "Ritz" and "Charles of the Ritz" line, and consisting of five different items, to wit: "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence Cream Ritz," and "Eyelash Grower Ritz."

PAR. 2. Said respondent being engaged in business as aforesaid, causes said preparations, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said preparations, distributed and sold by it, between and among the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling tonics, cosmetics, toilet and beauty preparations, and lotions, in commerce among and between the various States of the United States.

Continuously in and during the course and operation of its said business and as a part thereof, respondent has made false, fraudulent, misleading, and deceptive claims as to its said products.

Respondent issues and ships to and distributes to the public generally throughout various States of the United States through its distributors, sales branches, and sales people, large numbers of a

booklet entitled "Beauty in the Modern Mode." The said booklet contains among others, the following false, fraudulent, misleading, and deceptive representations and claims as to respondent's products:

1. Eye Lotion Ritz, a tonic as well as a beautifier for the eyes; strengthens the eye nerves, relieves eye strain, and keeps the eyes clear and sparkling.
2. Scalp Food Ritz, promotes the growth of the hair.
3. Eye Cream Ritz, nourishes the delicate tissues about the eyes; banishes lines and prevents crow's feet.
4. Rejuvenescence Cream Ritz, is an organic compound made of substances extracted from living tissue. It supplies the skin with the precious youth giving element essential to young skins. It is absorbed by the skin immediately, leaving no greasy film on the surface. Its basic elements penetrate to the derma or true skin, and revivify the tissues, giving the skin new life and vitality. Rejuvenescence Cream gives the skin an immediate bloom which eliminates the necessity for make-up foundation.
5. Eyelash Grower Ritz, promotes the growth of the lashes * * * Makes the lashes long, silken and luxurious.

Said representations and claims are untrue in that said "Eye Lotion Ritz" does not strengthen the nerves, relieve eye strain, but is merely an eye wash which can in no way influence the delicate nerves of the eye; said "Scalp Food Ritz" does not promote the growth of hair, and cannot act as a scalp food when applied externally; said "Eye Cream Ritz" does not nourish the tissues, banish lines and prevent crow's feet, in that it consists chiefly of petrolatum or vaseline which has no nourishing or wrinkle preventive quality; said "Rejuvenescence Cream Ritz" does not supply the skin with any youth giving element, nor does it penetrate the skin or revivify the tissues or give to the skin new life and vitality; and said "Eyelash Grower Ritz" contains no ingredient that makes it an eye lash grower, or which promotes the growth of the eyelashes, except some yellow mercuric oxide, which has a stimulating effect only when the follicles of the hair have not died or been destroyed.

PAR. 4. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public and cause it erroneously to believe that said representations are true, and, because of such erroneous belief, to purchase the preparations of the respondent, with the result that trade in said commerce is unfairly diverted to the respondent from said competitors who do not misrepresent their products, to the substantial injury of said competitors and to the injury of the public.

PAR. 5. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have

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been, and are, unfair methods of competition within the meaning and intent 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 28th day of July 1936, issued and served its complaint in this proceeding upon said respondent, Charles of the Ritz Distributors Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 18, 1936, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation duly organized and existing under the laws of the State of New York. Its plant, office, and principal place of business are located at 9-11 University Place, in the city and State of New York. Respondent is now and for some time has been engaged in the business of selling in interstate commerce a line of tonics, cosmetics, beauty and toilet preparations and lotions, commonly referred to as the "Ritz" and "Charles of the Ritz" line. For some time this line consisted of five different items, to wit: "Eye Lotion Ritz," "Scalp Food Ritz," "Eye Cream Ritz," "Rejuvenescence

Cream Ritz," and "Eyelash Grower Ritz," but for some time past respondent has not sold the "Scalp Food Ritz" nor "Eyelash Grower Ritz." Said preparations were and are being manufactured or compounded for respondent by Charles of the Ritz, Inc., a corporation of which respondent is a wholly-owned and controlled subsidiary.

PAR. 2. Respondent being engaged in business as aforesaid, causes said preparations, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said preparations, distributed and sold by it between and among the various States of the United States, except it no longer is engaged in shipping or selling "Scalp Food Ritz" and "Eyelash Grower Ritz."

PAR. 3. Respondent is now and has been, in the course and conduct of its said business, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling tonics, cosmetics, toilet and beauty preparations and lotions, in commerce among and between the various States of the United States.

PAR. 4. For several years last past in the course of its business respondent has issued and shipped to and distributed to the public generally throughout various States of the United States through its distributors, sales branches, and sales people, large numbers of a booklet entitled "Beauty in the Modern Mode." The said booklet contained among others, the following representations and claims as to respondent's products:

1. Eye Lotion Ritz, a tonic as well as a beautifier for the eyes; strengthens the eye nerves, relieves eye strain, and keeps the eyes clear and sparkling.
2. Scalp Food Ritz, promotes the growth of the hair.
3. Eye Cream Ritz, nourishes the delicate tissues about the eyes; banishes lines and prevents crow's feet.
4. Rejuvenescence Cream Ritz, is an organic compound made of substances extracted from living tissue. It supplies the skin with the precious youth-giving element essential to young skins. It is absorbed by the skin immediately, leaving no greasy film on the surface. Its basic elements penetrate the derma or true skin, and revivify the tissues, giving the skin new life and vitality. Rejuvenescence Cream gives the skin an immediate bloom which eliminates the necessity for make-up foundation.

The truth and fact is that said "Eye Lotion Ritz" does not strengthen the nerves of the eye, nor relieve eye strain due to any functional defect of the eye, but is merely an eye lotion which can in no way influence the delicate nerves of the eye or relieve functional eye strain; that said "Scalp Food Ritz" will not promote the growth of hair

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when the hair follicle or hair root is no longer present and can not act as a nourishing scalp food when applied externally, except that to a certain degree it is absorbed by the skin, although it does not reach the blood stream; that said "Eye Cream Ritz" does not nourish the underlying tissues; that said "Rejuvenescence Cream Ritz" is not an organic compound made of substance extracted from living tissue, and does not supply the skin with youth-giving elements, nor do its basic elements penetrate the derma or true skin or revivify the tissues or give the skin new life and vitality; and "Eyelash Grower Ritz" does not promote the growth of the lashes.

PAR. 5. As a result of respondent's said false and misleading representations a substantial number of the consuming public has purchased a substantial volume of respondent's preparations and so unfairly diverted a substantial volume of trade and business to respondent which would otherwise have gone to competitors who have not used such unfair methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Charles of the Ritz Distributors Corporation, are to the prejudice of the public and of respondent's competitors' and constitute unfair methods of a competition in 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 answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Charles of the Ritz Distributors Corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Charles of the Ritz Distributors Corporation, its officers, representatives, agents and employees,

either personally or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of its toilet or beauty preparations, or other products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly representing:

1. That "Eye Lotion Ritz" strengthens the eye nerves or relieves any eye strain due to any functional defect, or in any way influences the nerves of the eye.

2. That "Scalp Food Ritz" promotes the growth of hair, or acts as a nourishing scalp food.

3. That "Eye Cream Ritz" nourishes the delicate underlying tissues about the eyes, so as to prevent crow's feet or banish face lines.

4. That "Rejuvenescence Cream Ritz" is a compound made of substances extracted from living tissues, or that it supplies the skin with the precious youth-giving element essential to young skin, or that its basic elements penetrate the derma or true skin and so revivifies the tissues and gives the skin new life and vitality.

5. That "Eyelash Grower Ritz" promotes the growth of the lashes.

It is further ordered, That the 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
G. LINDHOLM COMPANY, INC.

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

Docket 2809. Complaint, May 18, 1936—Decision, Nov. 4, 1936

Where a corporation, engaged in sale and distribution to dealers, users, and consumers of a comb product for the treatment of the hair and scalp, designated, branded, and advertised by it as "Evans Dermetro Electric Comb"; in soliciting sale of its said product in radio broadcasts, advertisements, and advertising matter in newspapers and periodicals having interstate circulation—

- (a) Represented that said product constituted an "Amazing Invention", use of which would check dandruff and falling hair in a few days, impart new life to dry, dull hair and cause it to become wonderfully lustrous, thick and wavy, and use of which would arrest growing baldness, or tend to restore gray hair to its original color, and that new hair had started to grow in cases of premature baldness, as though a miracle, according to many users, by reason of the asserted scientific action of the electric current, as explained by European doctors, etc.; and
 - (b) Represented that "A thousand-dollar guarantee goes with every comb," and that "If after seven days' usage you are not satisfied, just return the comb and your money will be cheerfully refunded," and included in its magazine advertisement a coupon or blank, to be filled out by the prospective purchaser, bearing the legend "\$1,000 GUARANTEE COUPON," and assurance similar to that hereinabove set forth, and to the effect that purchase price, in event of dissatisfaction, would be returned "without question or quibble";
- The facts being said representations, statements, and assertions were false, misleading, and deceptive, in that use of product would not check dandruff and falling hair, etc., as above set forth, or cause it to become wonderfully lustrous, etc., or arrest growing baldness, or tend to restore gray hair to its original color, and product did not possess therapeutic value and properties claimed for it, and as respects alleged guarantee said sum had not actually been posted or deposited as collateral security with any individual or concern as depository, so as to make it properly available to any purchaser as good and sufficient security in the event that such alleged guarantee was breached by it, and guarantee was vague, misleading, and deceptive, in that it did not actually go with every comb;

With capacity and tendency to mislead and deceive the purchasing public into buying its said product under the erroneous belief that such statements and representations were true, and that use thereof would accomplish results claimed for it therein, and with result that trade was unfairly diverted to it from its competitors who truthfully represent their respective products and the benefits to be obtained from the use thereof; to the substantial injury of competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John Darsey 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 G. Lindholm Company, Inc., 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 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, G. Lindholm Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business located at 316 Flatbush Avenue, Borough of Brooklyn, city and State of New York.

PAR. 2. Respondent is now and has been for more than one year last past, engaged in the business of selling and distributing to dealers, users, and consumers in various parts of the United States, a comb product for use in treating the hair and scalp of men and women which it designates, brands, and advertises as "Evans-Dermetro Electric Comb", and has caused said product, when sold, to be shipped and transported from its place of business in the State of New York to purchasers thereof located in many other States of the United States. In the course and conduct of its business as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals, engaged in interstate commerce, in the business of selling and distributing like and similar electric combs; and also with corporations, partnerships, firms, and individuals engaged in the business of selling and distributing, in interstate commerce, medications and preparations for use in the treatment of dandruff, falling hair, early baldness, and other related hair and scalp complaints; and also with corporations, partnerships, firms, and individuals engaged in the business of selling and distributing, in interstate commerce, hair dyes and hair coloring products.

PAR. 3. In the course and conduct of its said business, as aforesaid described and alleged, respondent, in soliciting the sale of and sell-

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ing its said product, "Evans Dermectro Electric Comb," has made, and caused to be made, false and misleading statements and representations in and by means of advertisements in magazines and newspapers having interstate circulation, other advertising matter, and radio broadcasts, and has pursued methods and practices, in substance as follows:

(a) In said radio broadcasts, advertisements, and advertising matter, said product was represented and referred to by such statements as an "amazing invention" and that "it does wonders for your hair"; and that by its use: "dandruff and falling hair have been checked in a few days", "dry, dull hair gained new life", "became wonderfully lustrous", "straight and thin hair became thick and wavy", "new hair has started to grow in cases of premature baldness, as though a miracle, many users write", "it strokes new life and vigor into your hair", "gray hair has come in darker at the roots"; and that "European doctors explained this miraculous phenomena thus: that the gentle, shockless electric current, passing from the battery in the handle of the comb through its teeth to your hair and scalp, is able to reach the weakened hair roots—literally pouring its life-giving energy over them, waking them up and stimulating them"; and many other statements of similar import and character.

(b) In connection with the sale of said product, as aforesaid described and alleged, respondent in its said radio broadcasts, advertisements, and advertising matter stated and represented a purported guarantee as follows: "A thousand-dollar guarantee goes with every Comb. If after seven days' usage you are not satisfied, just return the Comb and your money will be cheerfully refunded"; and also in the order or coupon blank, contained and set forth in a magazine advertisement concerning said product, the said coupon or order blank, which is to be filled out by the prospective purchaser when ordering said product, bears the legend, "\$1,000 GUARANTEE COUPON" and an assurance to any such purchaser in language similar in import to that next hereinabove immediately quoted, and to the effect that the purchase price in the event of dissatisfaction will be returned "without question or quibble".

PAR. 4. In truth and in fact the said representations, statements and assertions described, alleged and set forth in paragraph numbered 3 hereof are false, misleading, and deceptive in that the use of said product will not check dandruff and falling hair in a few days, or impart new life to dry, dull hair, or cause it to become wonderfully lustrous, thick and wavy, or arrest growing baldness, or tend to restore gray hair to its original color, or perform any function or use other than that which may be accomplished by the ordinary

celluloid, rubber or bone hair comb. Said product does not possess the therapeutic value and properties claimed for it; and, insofar as the alleged guarantee of \$1,000 is concerned, said sum has not actually been posted or deposited by the respondent as collateral security with any individual, firm, partnership, or corporation, as depository, so as to make it properly available to any purchaser as good and sufficient security in the event that said alleged guarantee is breached by the respondent. Further, said guarantee is vague, misleading, and deceptive in that a thousand-dollar guarantee does not actually go with every comb.

PAR. 5. Said statements and representations, as heretofore alleged and set forth, have the capacity and tendency to mislead and deceive the purchasing public into buying said product under the erroneous belief that they are true and that the use of said product will accomplish the results claimed for it in said radio broadcasts, advertisements, and advertising matter.

PAR. 6. In the course and conduct of its business as aforesaid, respondent is in competition with the various classes of competitors named in paragraph 2 hereof, which said competitors, singly and respectively, in no wise make the same or similar false and misleading representations or guarantees as made by the respondent, as hereinbefore set forth, but who truthfully and accurately state the uses for which their said respective products may be used and the effects obtained from a use thereof. The aforesaid representations and statements made by the respondent about its product and the use of its purported "\$1,000 Guarantee", as hereinbefore stated and alleged, in its radio broadcasts, advertisements and advertising matter, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers to buy the product of the respondent in and on account of the belief that said representations are true, and thus unfairly divert trade to respondent from its said competitors, who truthfully represent their respective products and the benefits to be obtained from a use thereof. As a result thereof, substantial injury has been, and is being, done by respondent to competition in commerce as hereinabove set out.

PAR. 7. The acts and things done by respondent as hereinabove alleged, described and set forth, are to the injury and prejudice of the public and to competitors of respondent, 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.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 18, 1936 issued, and on May 19, 1936 served, its complaint in this proceeding upon respondent, G. Lindholm Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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. G. Lindholm Company, Inc., hereinafter referred to as respondent, is a corporation organized and existing by virtue of the laws of the State of New York. It has an office and principal place of business at 316 Flatbush Avenue, Borough of Brooklyn, city and State of New York.

PAR. 2. Respondent is engaged in the business of selling and distributing to dealers, users, and consumers in various parts of the United States, a comb product for use in treating the hair and scalp of men and women, which product it designates, brands and advertises as "Evans Dermectro Electric Comb." The respondent causes the aforesaid product when sold to be shipped and transported from its place of business in the State of New York to purchasers thereof located in many other States of the United States. The respondent has been engaged in the aforesaid business for a number of years. In the course and conduct of its business as aforesaid the respondent is in competition with corporations, partnerships, firms, and individuals, engaged in interstate commerce, in the business of selling and distributing a like and similar electric comb; and also with corporations, partnerships, firms, and individuals engaged in the

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business of selling and distributing, in interstate commerce, medications and preparations for use in the treatment of dandruff, early baldness, falling hair, and other related hair and scalp diseases; and also with corporations, partnerships, firms, and individuals engaged in the business of selling and distributing in interstate commerce, hair dyes and hair coloring products.

PAR. 3. In the course and conduct of its business, as described and set forth in paragraph 2 supra, the respondent, in connection with the soliciting of sale and sale of its product, "Evans Dermectro Electric Comb", causes false and misleading statements and representations to be made in radio broadcasts, advertisements, and advertising matter carried in newspapers and periodicals having interstate circulation, in substance as follows:

(a) That its product "Evans Dermectro Electric Comb" is an "Amazing Invention", and that "it does wonders for your hair"; and that by its use: "Dandruff and falling hair have been checked in a few days"; "dry, dull hair gained new life"; "became wonderfully lustrous"; "straight and thin hair became thick and wavy"; "new hair has started to grow in cases of premature baldness, as though a miracle, many users write"; "it strokes new life and vigor into your hair"; "gray hair has come in darker at the roots"; and that "European doctors explained this miraculous phenomena thus; that the gentle, shockless electric current passing from the battery in the handle of the comb through its teeth to the hair and scalp is able to reach the weakened hair roots, literally pouring its life-giving energy over them waking them up and stimulating them"; and many other statements of similar import and character.

(b) That "A thousand-dollar guarantee goes with every comb. If after seven days' usage you are not satisfied, just return the comb and your money will be cheerfully refunded"; and also in the order or coupon blank, contained and set forth in the magazine advertisement concerning said product, the said coupon or order blank which is to be filled out by the prospective purchaser in ordering said product, bears the legend "\$1,000 GUARANTEE COUPON" and an assurance to any such purchaser in language similar in import to that next hereinabove immediately quoted, and to the effect that the purchase price in the event of dissatisfaction will be returned "without question or quibble".

PAR. 4. The representations, statements, and assertions set forth in paragraph 3 supra, are false, misleading, and deceptive in that the use of said product will not check dandruff and falling hair in a few days, or impart new life to dry, dull hair, or cause it to become wonderfully lustrous, thick and wavy, or arrest growing baldness or

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tend to restore gray hair to its original color. The product does not possess the therapeutic value and properties claimed for it; and, insofar as the alleged guarantee of \$1,000 is concerned, said sum has not actually been posted or deposited by the respondent as collateral security with any individual, firm, partnership, or corporation, as depository, so as to make it properly available to any purchaser as good and sufficient security in the event that said alleged guarantee is breached by the respondent. The said guarantee is vague, misleading, and deceptive in that the thousand-dollar guarantee does not actually go with every comb.

PAR. 5. The statements and representations as heretofore set forth, have the capacity and tendency to mislead and deceive the purchasing public into buying respondent's product under the erroneous belief that they are true and that the use of said product will accomplish the results claimed for it in said representations. As a consequence of said false and misleading representations, trade is unfairly diverted to respondent from its competitors who truthfully represent their respective products and the benefits to be obtained from the use thereof. As a result thereof substantial injury is done by respondent to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent G. Lindholm Company, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on October 13, 1936 by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, G. Lindholm Company, Inc., its officers, representatives, agents, and employees, in connection with

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the offering for sale, sale and distribution of its product, "Evans Dermectro Electric Comb" in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through the use of such phrases as "amazing invention", "it does wonders for your hair", "dandruff and falling hair have been checked in a few days", "dry, dull hair gained new life", "became wonderfully lustrous", "straight and thin hair became thick and wavy", "new hair has started to grow in cases of premature baldness, as though a miracle, many users write", "it strokes new life and vigor into your hair", "gray hair has come in darker at the roots", "European doctors explained this miraculous phenomena thus: that the gentle, shockless electric current, passing from the battery in the handle of the comb through its teeth to your hair and scalp, is able to reach the weakened hair roots—literally pouring its life-giving energy over them, waking them up and stimulating them"; or words or phrases of similar import and effect that the use of its product will check dandruff and falling hair; impart new life to dry, dull hair and cause it to become lustrous, thick and wavy; arrest growing baldness or restore gray hair to its original color; or that the use of said product will accomplish similar therapeutic benefits;

2. Representing, directly or indirectly, through the use of such language as "a thousand-dollar guarantee goes with every comb. If after seven days' usage you are not satisfied, just return the comb and your money will be cheerfully refunded", in purported guarantees that each of respondent's products carries with it a guarantee for the benefit of the purchaser in the event of dissatisfaction with said product.

It is further ordered, That the 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
UTILITIES ENGINEERING INSTITUTE

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

Docket 2896. Complaint, Aug. 11, 1936—Decision, Nov. 4, 1936

Where a corporation engaged in the sale and distribution of a correspondence course in air conditioning and electric refrigeration direct to the purchasing public in the various States and in the District of Columbia, and in connection therewith in advertising, among other things, that prominent officials of leading manufacturing firms served actively as an "Advisory Board" for it, contributing their time and assistance, and using a fictitious name asserted to represent a separate company retained by it to enforce the collection of overdue accounts, and through which it threatened customers, etc.; in competition with those who do not, in the guise of offering employment, advertise their said courses, represent that leading manufacturers are serving actively in an advisory capacity or contributing their time and assistance, or employ dummy trade names in the guise of collection agencies, but accurately advertise and represent their said courses—

- (a) Inserted in the classified advertisements in newspapers and periodicals of general circulation, as a means of contacting prospective customers, and in many instances under such headings as "Help Wanted" or "Male Help Wanted" such statements as "Wanted—Men to Qualify for Good Pay Positions," "We want to interview men willing to qualify for jobs in air conditioning, electric refrigeration. Big pay opportunities for young men in America's fastest-growing businesses * * *," "Reliable young men wanted," and frequently gave a post office box number only in connection therewith, and turned over to its agents and representatives inquiries or replies received in response to such "blind ads," which failed to disclose the actual fact that it was a correspondence course, including shop practice and placement help, that was being offered, and misled and deceived prospect into erroneous belief that advertiser was in a position to offer him employment; and
- (b) Represented that so-called "Job tickets" would be furnished applicants or students after a short time, whereby they could earn money, while training, through installation and servicing of electric ice boxes, through including in its application blanks used by it in signing prospects to its refrigeration contracts that it offered the prospect, among other features and services, "A series of Job Tickets to enable me to do spare time servicing, earn extra money, and gain practical experience while training;" facts being it had no jobs or positions to offer, leading manufacturers did not serve it in an advisory capacity or thus contribute their time to the conduct of its activities, and collection agency referred to was merely a trade name employed by it for collecting unpaid accounts and sums of money claimed to be due it from customers;

With capacity and tendency to mislead and deceive those contracting with, or considering contracting with it, and with effect of so doing, and with result that some of prospects thus contacted by it through its advertisements,

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agents, or use of mails as inducement to sign contracts with it, were thereby led into belief, and believed that it would provide them with jobs if they took its course, and with permanent positions upon completion thereof; and with result that customers, by reason of such false and misleading representations, were induced and persuaded to buy its said courses, and trade was thereby diverted to it from competitors; to the substantial injury of competition in commerce:

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

Mr. Marshall Morgan for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Utilities Engineering Institute, Inc., hereinafter referred to as respondent, has been, and is now, 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 Utilities Engineering Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 404 North Wells Street, in Chicago, State of Illinois, with a branch office located at 841 Broadway, New York City.

Respondent is now, and for more than one year last past, has been engaged in the sale and distribution of correspondence courses in air conditioning and electric refrigeration direct to the purchasing public located in the various States of the United States other than the State of Illinois, and in the District of Columbia.

There is now and has been for more than one year last past a consistent current of trade and commerce by said respondent in aforementioned correspondence courses between and among various States of the United States and the District of Columbia. In the course and conduct of its said business respondent is and has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of correspondence courses in air conditioning and electric refrigeration. In connection with the sale and distribution of its said correspondence courses, respondent transports or

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causes to be transported from its place of business in the State of Illinois to the purchasers thereof located in a State or States other than the said State of Illinois, printed copies of volumes of its lessons, examination questions and other pamphlets and documents used in connection with correspondence courses sold by respondent.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has been and is now engaged in soliciting the sale of and in selling correspondence courses, including books, pamphlets, and written lessons in air conditioning and electric refrigeration, through the medium of "Want" advertisements inserted in daily and weekly newspapers, magazines, and similar publications, and by correspondence and salesmen. Said salesmen are furnished by respondent, for submission to prospective customers, with blanks, written contracts, and advertising material.

Respondent's method of getting in communication with prospective customers is to insert "blind" advertisements in newspapers, magazines, and other periodicals having general circulation throughout the various States of the United States. Included among said advertisements caused by respondent to be thus published are the following:

Wanted—Men to Qualify for Good Pay Positions

* * * * *

We want to interview men willing to qualify for jobs in air conditioning, electric refrigeration. Big pay opportunities for young men in America's fastest-growing businesses * * *

* * * * *

Reliable young men wanted.

these and similar advertisements appearing in many instances in the classified advertising columns under such headings as: "Help Wanted", or "Male Help Wanted". In various instances advertisements thus employed by the respondent gave and give only a post office box number and said advertisements were and are so worded as to conceal cleverly the actual fact that a correspondence school course only was and is being offered for sale, and have confused, misled and deceived and do confuse, mislead and deceive the prospective purchaser into believing that the advertiser was and is in a position to offer him employment, when such was not the fact.

Inquiries or replies received in response to such advertisements were and are turned over to agents and representatives of respondent, who thereupon follow them up and contact the persons making inquiry and reply and obtain or endeavor to obtain their signatures to contracts for respondent's said correspondence course.

PAR. 3. In the course and conduct of its business as aforesaid, respondent attempts to and does enforce collections of accounts over-

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due it by reason of the contracts for its courses of study induced and obtained from purchasers through its false representations and mis-statements as aforesaid, by the following means and method:

It has adopted and uses a fictitious name, to wit, "Globe Agency," which it falsely represents to its said customers is a separate company from the respondent, which said separate company has been retained to enforce the collection of the said overdue payments, and under the said fictitious name threatens its said customers with court proceedings and with additional charges and costs in the event that the said overdue payments are not promptly made. In carrying out this deceptive practice, special letterheads are prepared by respondent for the said Globe Agency, reading as follows:

GLOBE AGENCY

Collections

Adjustments

BAD ACCOUNTS

OUR SPECIALTY

Creditor's Claim----- Room 611 Amount-----
 820 N. Michigan Avenue
 Docket No.----- Chicago, Illinois Date Received-----

Said address given as aforesaid for the Globe Agency is other than and different from that given by respondent as its own principal office address, namely 404 Wells Street, Chicago, Ill.

In truth and in fact the "Globe Agency" is none other than the respondent itself.

PAR. 4. Respondent, in further connection with the sale of its correspondence courses in commerce, has represented and represents, through salesmen and through office advertising literature, that so-called "Job Tickets" would be furnished applicants after a short time, whereby they could earn money through the installation and servicing of electric ice boxes, and respondent's "Personal Qualification Chart," presented by respondent's agents or transmitted through the mails to prospects for signature, contains the following among other inquiries:

Do you prefer local employment after completing the training? Would you be willing to accept a position in another city if the location and all conditions were satisfactory to you?

Application blanks employed by respondent in signing prospects to electric refrigeration training contracts offer the said prospects the following among other features and service:

A series of Job Tickets to enable me to do spare time service, earn extra money, and gain practical experience while training.

and

Free employment service after graduation.

Prospects contacted by respondent company through its advertisements, agents, or by the use of the mail, as an inducement to them to sign contracts with respondent, are thereby led to believe, and do believe, and have believed that respondent company will and would provide them with jobs as they take respondent's course, and with permanent positions upon the completion thereof, when such is not the fact.

PAR. 5. Respondent, in further connection with the sale of its correspondence course, including the respective features thereof, has represented and represents that its plan of training is and has been made possible through the cooperation of leading manufacturing firms engaged in the manufacture of refrigeration and air conditioning products, and that prominent officials of such companies serve actively as an "Advisory Board" for respondent, contributing their time and assistance to the conduct of respondent's activities, when such are not the facts.

The above and hereinbefore recited representations are false, misleading, and deceptive, and have the capacity to and do mislead and deceive those contracting with or who consider contracting with respondent. In truth and in fact, respondent has no jobs or positions to offer or to give as represented in its "Male Help Wanted" and similar classified advertising, or by agents or office literature transmitted through the mail; the Globe Agency so-called, is not, in fact, a collection agency or a company at all, but a trade name and dummy employed by respondent in collecting unpaid accounts claimed to be due it and in obtaining sums of money in excess of those actually due from customers; and said leading manufacturers through their alleged cooperation, have not made possible respondent's plan of training, and do not serve and have not served actively on respondent's advisory board or contributed their time to the conduct of respondent's activities.

PAR. 6. Among the competitors of respondent referred to in paragraph 1 hereof, there are those who do not offer and advertise correspondence courses under the guise of offering employment to or employing male help, who do not employ dummy trade name companies under the guise of collection agencies, and who do not represent that the cooperation of leading manufacturers of air conditioning and refrigeration products have made their correspondence courses possible and that such leading manufacturers are serving actively on their advisory boards and are contributing actively their time and assist-

ance, and who in no wise make use of the methods employed by respondent and do not make the same or similar representations, but who, on the contrary, advertise and represent their correspondence courses fairly and accurately.

PAR. 7. Respondent's use of the above recited statements and representations is false and misleading. As a result of such false and misleading representations on the part of respondent, customers are being and have been induced and persuaded to purchase the correspondence courses in air conditioning and electric refrigeration offered by respondent, thus diverting trade to respondent from its competitors, and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 8. The aforesaid methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinbefore alleged, 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."

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 11th day of August 1936, issued, and on the 13th day of August 1936, served, its complaint in this proceeding upon respondent, Utilities Engineering Institute, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent, Utilities Engineering Institute, on the 17th day of September 1936, entered into a stipulation as to the facts, which stipulation was duly filed in the office of the Commission, and was on the 28th day of October, approved by the Commission. In said stipulation as to the facts, respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in the complaint, and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and order to cease and desist from the violations of law charged in the complaint.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and stipulation as to the

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facts, briefs and oral argument of counsel having been waived, and the Commission having duly considered the same and being now 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 is now, and for more than one year last past has been, engaged in the sale and distribution of correspondence courses in air conditioning and electric refrigeration direct to the purchasing public located in the various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and has been for more than one year last past, a consistent current of trade and commerce by said respondent in aforementioned correspondence courses 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, and has been, in substantial competition with other corporations and with partnerships and with individuals engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of correspondence courses in air conditioning and electric refrigeration. In connection with the sale and distribution of its said correspondence courses, respondent transports, or causes to be transported, from its place of business in the State of Illinois to the purchasers thereof located in a State or States other than the said State of Illinois, printed copies of its lessons, examination questions, and other pamphlets and documents used in connection with correspondence courses sold by respondent.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has been, and is now, engaged in soliciting the sale of, and in selling, correspondence courses, including pamphlets and written lessons and shop practice in air conditioning and electric refrigeration, through the medium of "Want" advertisements inserted in daily and weekly newspapers, magazines, and similar publications, and by correspondence and salesmen. Said salesmen are furnished by respondent, for submission to prospective customers, with blanks, written contracts, and advertising material.

Respondent's method of getting in communication with prospective customers is to insert classified advertisements in newspapers, magazines, and other periodicals having general circulation throughout the

various States of the United States. Included among said advertisements caused by respondent to be thus published, are the following:

Wanted—Men to Qualify for Good Pay Positions

* * * * *

We want to interview men willing to qualify for jobs in air conditioning, electric refrigeration. Big pay opportunities for young men in America's fastest-growing businesses * * *

* * * * *

Reliable young men wanted

These and similar advertisements appeared in many instances in the classified advertising columns under such headings as: "Help Wanted", or "Male Help Wanted." In various instances advertisements thus employed by the respondent gave, and give, only a post office box number, and said advertisements, known as "Blind Ads", were, and are, so worded as not to disclose the actual fact that a correspondence school course, including shop practice and placement help, was, and is, only being offered for sale, and have confused, misled, and deceived, and do confuse, mislead, and deceive, the prospective purchaser into believing that the advertiser was, and is, in a position to offer him employment, when such was not the fact, the true fact being that only assistance in the matter of placement is rendered to students trained by the school.

Inquiries or replies received in response to such advertisements were, and are, turned over to agents and representatives of respondent, who thereupon follow them up and contact the persons making inquiry and reply, and obtain or endeavor to obtain their signatures to contracts for respondent's said correspondence courses.

PAR. 3. Respondent, in further connection with the sale of its correspondence courses in commerce, has represented through salesmen and through office advertising literature, that so-called "job tickets" would be furnished applicants after a short time, whereby they could earn money through installation and servicing of electric refrigerators.

Application blanks employed by respondent in signing prospects to electric refrigeration training contracts have offered the said prospects the following, among other features and services:

A series of Job Tickets to enable me to do spare time servicing, earn extra money, and gain practical experience while training.

Some of the prospects contacted by respondent company through its advertisements, agents, or by the use of the mails, as an inducement to them to sign contracts with respondent, are thereby led to believe, and do believe, and have believed, that respondent company will, and would, provide them with jobs if they take respondent's course, and

with permanent positions upon completion thereof, when such is not the fact.

PAR. 4. Respondent, in further connection with the sale of its correspondence courses, including the respective features thereof, has represented, and represents, that prominent officials of leading manufacturing firms serve actively as an "Advisory Board" for respondent, contributing their time and assistance to the conduct of respondent's activities, when such are not the facts.

PAR. 5. In the further course and conduct of its business as aforesaid, respondent attempts to, and does, enforce the collection of accounts overdue it by reason of the contracts for its courses of study induced and obtained from purchasers as hereinbefore related, by the following means and method:

It has adopted and uses a fictitious name, to-wit, "Globe Agency", which it deceptively represents to its said customers as a separate company from respondent, retained by respondent to enforce the collection of said overdue payments or accounts, and under and through the use of said fictitious name threatens respondent's said customers with court proceedings and with additional charges and costs in the event that said overdue payments are not promptly made. In carrying out this deceptive practice, special letterheads are prepared for the said Globe Agency, reading, among other particulars, as follows:

GLOBE AGENCY

Collections
Adjustments

BAD ACCOUNTS

OUR SPECIALTY

Creditor's Claim	Room 611	Amount
	820 N. Michigan Avenue	
Docket No.	Chicago, Illinois	Date Received

Said address given as aforesaid for the Globe Agency is other than, and different from, that given by respondent as its own principal office address, namely, 404 Wells Street, Chicago, Ill.

In truth and in fact, the said "Globe Agency", thus represented by respondent as an actual bona fide collection agency, is none other than the respondent itself.

The above and hereinbefore recited representations are false, misleading and deceptive, and have the capacity to, and do, mislead and deceive those contracting with, or who consider contracting with, respondent. In truth and in fact, respondent has no jobs or

positions to offer or to give, as might be inferred from its "Male Help Wanted" advertising, or from the representations of its agents, or representations contained in its office literature transmitted through the mail; leading manufacturers through their alleged official cooperation, do not serve, and have not served, actively or officially on respondent's advisory board, or contributed their time in such way to the conduct of respondent's activities; and the Globe Agency, so called, is not in fact a collection agency or a company at all, but merely a trade name and dummy employed by respondent in collecting unpaid accounts and various sums of money claimed to be due it from customers.

PAR. 6. Among the competitors of respondent referred to in paragraph 1 hereof, there are those who do not offer and advertise correspondence courses under the guise of offering employment to, or employing, male help; who do not represent that leading manufacturers are serving actively and officially on their advisory boards and are contributing actively and officially their time and assistance; who do not employ dummy trade name companies under the guise of collection agencies, and who in no wise make use of the methods employed by respondent, and who do not make the same or similar representations, but who, on the contrary, advertise and represent their correspondence courses accurately.

PAR. 7. The aforesaid representations made by the respondent about and concerning its correspondence courses are false and misleading, and as a result of such representations on the part of respondent, customers are being, and have been, induced and persuaded to purchase the correspondence courses in air conditioning and electric refrigeration offered by respondent, thus diverting trade to respondent from its competitors and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondent herein, Utilities Engineering Institute, a corporation, and counsel for this Commission, in which stipulation as to the facts respondent admits all the material allegations of the complaint to be true and states that it waives hearing on the charges set forth in the complaint, and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and the 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"; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of said Act of Congress;

It is hereby ordered, That the said respondent, Utilities Engineering Institute, its officers, representatives, agents, and employees, in connection with offering for sale, sale and distribution of correspondence courses in air conditioning and electric refrigeration in interstate commerce or in the District of Columbia, do cease and desist:

1. From representing, directly or indirectly, through advertisements inserted in classified advertising pages of newspapers, magazines or other advertising literature, under such headings as "Wanted", "Help Wanted", "Male Help Wanted", "Young Men Wanted", or headings of similar import and effect, or through the use of any other means, that respondent has positions or jobs at its disposal or that employment is being or will be offered to persons who answer said advertisements, when said advertisements are in reality contact advertisements used in connection with the sale of respondent's course of instructions;

2. From the use of any word or words employed as a heading, title or otherwise in newspaper advertising or other advertising media which have the capacity, tendency and effect of confusing, misleading or deceiving the reader of such advertisement in relation to the fact that a correspondence course of instruction in air conditioning and electric refrigeration is being offered for sale;

3. From representing, directly or indirectly, that so-called "Job Tickets" will be furnished applicants or students, after a short time, whereby they can earn money while training, through the installation and servicing of electric ice boxes;

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4. From representing, directly or indirectly, that respondent has made arrangements with various firms, by which said firms will employ students who have concluded any course of instruction sold by it and give them permanent positions, or that respondent will do so.

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

IN THE MATTER OF
CHASE CANDY COMPANY

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

Docket 2562. Complaint, Sept. 27, 1935—Decision, Nov. 7, 1936

Where a corporation, engaged in manufacture and sale of candy, including both "straight goods" and "draw" or "deal" assortments, in which, as case might be, (1) number disclosed by chance on push card included, by penny purchaser, decided whether such purchaser received for his penny one of the small pieces of candy in the assortment, one of the larger pieces, or a still larger piece or bar; and (2) number thus disclosed on a push card, likewise included with such second assortment, by 5¢ purchaser, by chance, determined whether such purchaser received for his 5¢ one, two, three, four, or five bars; with last purchase in case of both assortments receiving a further piece or package, respectively, without charge;

Sold said assortments, with cards, to retailers, wholesalers, and jobbers in certain States, knowingly assembled and packed for resale, without alteration, addition, or rearrangement, to the consuming, purchasing public, by lot or chance by retailers, which, as sellers of its said candy, included grocery and candy stores, stores in vicinity of schools, and drug stores, and stores of which, in case of small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy, and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of becoming a winner, and sale of which "straight" goods candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of said gambling feature connected therewith;

With result that many competitors dealing in "straight goods" candy only, and who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in "straight goods," and able to compete on even terms only by giving same or similar devices to retailers, sale of such refusing competitors' "straight goods" candy showed continued decrease, some competitors began sale and distribution of candy to public by lot or chance to meet constant demand for candy thus sold, public and competitors

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were prejudiced and injured, and there was a restraint upon and a detriment to the freedom of fair competition in said industry, and violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Chase Candy Company, a corporation, hereinafter referred to as respondent, has been and is now 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 is a corporation organized under the laws of the State of Missouri, with its principal office and place of business located in the city of St. Joseph, State of Missouri. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale thereof and distribution to wholesale and retail dealers located at points in the various States of the United States, and causes the said products, when so sold, to be transported from its place of business in the city of St. Joseph, Mo., to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy. Certain of said packages are hereafter described for the purpose of illustrating the methods used by respondent, but this list is not all in-

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clusive of the various sales plans or the details of sales plans which respondent has been or is using to distribute candy by lot or chance.

Among such assortments is one which the respondent designates as "Gold Nugget Draw". This assortment is composed of a number of small chocolate-covered vanilla cream patty candies, 17 chocolate-covered nougat bars which are larger than the cream patties, 1 large chocolate-covered triple nougat bar, and a device commonly called a push card, containing 150 pushes. Sales are one cent each, and when a push is made from said card a number is disclosed. There are 150 numbers on said card, but they are not arranged consecutively. The card bears a statement or statements informing the prospective customers as to which numbers receive the chocolate-covered vanilla cream patties and which numbers receive the chocolate-covered nougat bars. The last purchase on said card receives the chocolate-covered triple nougat bar. The numbers on said card are effectively concealed from the purchasers or proposed purchasers until a push or selection has been made and the particular push separated from the card. The fact as to whether the customer receives one of the small chocolate-covered cream patties or one of the chocolate-covered nougat bars is thus determined wholly by lot or chance.

Among such assortments is another assortment designated by respondent as "Good and Lucky Assortment". This assortment consists of a number of bars of candy and one package of assorted chocolates, together with a device commonly called a push card, containing 60 pushes. Sales are 5¢ each and when a push is made from said card a number is disclosed. There are 60 numbers on said card, but they are not arranged consecutively. All purchasers receive a bar of candy but a small number of the purchasers received additional bars without additional cost and the card bears a statement or statements informing the prospective customer as to which numbers receive additional bars of candy. The purchaser of the last push on the card receives the package of assorted chocolates. The numbers on said card are effectively concealed from the purchasers or prospective purchasers until a push or selection has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale, in connection with the aforesaid push cards, and sell said candy 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 sales plans hereinbefore set forth as a means of inducing purchasers thereof to purchase respondent's said products in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candies to the purchasing public, as above alleged, involves a game of chance or sale of a chance to procure larger or additional pieces of candy in the manner alleged. Such games of chance, and the sale, along with the sale of such candy, of such chance to procure such larger or additional pieces of candy in the manner alleged, are contrary to the established public policy of the several States of the United States 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, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or a sale with such candies of a chance to procure larger or additional pieces of candy by chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods 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 respondent who do not use the same or equivalent methods. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondents 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 methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods 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 methods or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, because such methods are 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 methods are 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 methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said methods, 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.

REPORT, MODIFIED 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 September 27, 1935, issued and served a complaint upon the respondent, Chase Candy Company, charging that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

After the issuance of the complaint, the respondent having failed to file answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and evidence were duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondent, although an opportunity was afforded it so to do. Thereafter, the proceeding came regularly on for final hearing before the Commission on said complaint and the testimony and evidence and brief in support of the complaint (respondent having failed to file any brief and no request having been made to orally argue the matter) and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings

FINDINGS AS TO THE FACTS

1 PARAGRAPH 1. Respondent, Chase Candy Company, is a corporation organized under the laws of the State of Missouri, with its principal office and place of business located in the city of St. Joseph, Mo. Respondent is now and for several years last past has been engaged in the manufacture of candy in St. Joseph, Mo., and in the sale and distribution of said candy to retail dealers, wholesale dealers and jobbers located in Missouri, Kansas, Oklahoma, Illinois, Nebraska, Iowa, and Arkansas. It causes said candy when sold to be shipped and transported from its principal place of business in Missouri to its customers in the above named States. 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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof between and among the various States of the United States.

PAR. 2. Among the candies manufactured and distributed by respondent is an assortment containing a number of small pieces of candy, a number of larger pieces of candy, and one still larger piece or bar of candy, together with a device commonly known as a "push card". The candy in said assortment is distributed to the ultimate consumer by means of said push card in the following manner:

Said push card has a number of partially perforated disks, and when a disk is pushed or separated from the card a number is disclosed. These numbers are effectively concealed from customers and prospective customers until a disk is pushed or separated from the card. The push card bears legends or statements as follows:

1¢ GOLD NUGGET DRAW 1¢
 Per Per
 Sale Sale

EVERY NUMBER WINS
 Number 5-10-15-20-25-40-45-50-
 55-60-65-70-75-90-95-100-110-
 receives a Chocolate Covered Nougat Bar.
 Other numbers receive a Chocolate
 Covered Vanilla Cream Patty. Last purchase on card receives the GRAND prize,
 a Chocolate Covered Triple Nougat Bar.

Push	Push	Push	Push	Push	Push
------	------	------	------	------	------

Etc.

The candy contained in said assortment is distributed to the consuming public in accordance with the legends at the top of said push card,

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and the fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or still larger piece or bar of candy for the price of 1¢ is thus determined wholly by lot or chance.

PAR. 3. Another assortment manufactured and distributed by respondent consists of a number of bars of candy, a package of assorted chocolates, and a device commonly called a "push card". The said push card has at the top thereof the following legends:

5¢	GOOD AND LUCKY	5¢
Per	ASSORTMENT	Per
Sale		Sale

Number 50 receives Five Bars
 Numbers 1-20 receive Four Bars.
 Numbers 30-40-60 receive Three Bars.
 Numbers 5-7-15-17-25-27-35-37-45-47
 receive Two bars.
 Other numbers receive One Bar.
 Last purchase on card receives the cellophane
 wrapped package of Assorted Chocolates.

Push	Push	Push	Push	Push	Push	Push	Push
------	------	------	------	------	------	------	------

Etc.

The candy in said assortment is distributed to the consuming public in accordance with the legends shown on said push card, and the said push card is similar in principle to the push card described in paragraph 2 above. The fact as to whether a purchaser receives more than one bar of candy or receives the package of respondent's chocolates for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 4. The lottery or prize assortments as described in paragraphs 2 and 3 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments, and assortments of candy without the gaming device or lottery feature 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. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above direct 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 the candy contained in said packages is sold and distributed to the consuming public in the manner described.

PAR. 6. All sales made by respondent, whether to wholesale dealers and jobbers or to retail dealers, are absolute sales and respondent

retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such a manner that they are sold or may be sold by the retail dealers to the purchasing public in the manner described without alteration or rearrangement.

The respondent has knowledge that said assortments 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 without alteration, addition, or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by retail dealers by the methods described in paragraphs 2 and 3 above is a sale and distribution of candy by lottery or chance and constitutes a lottery or gaming device.

Respondent's candy is sold to the consuming public in grocery stores, candy stores, school stores, delicatessen stores, and drug stores.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such methods of sale and distribution as morally bad and as 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 "draw" or "deal" methods 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" show a continued decrease.

There is a 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 to respondent's competitors and has resulted in the diversion of trade to respondent from its said com-

petitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. One of the principal demands in the trade for the "draw" or "deal" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of 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 "draw" or "deal" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight goods" candy, when the two types of assortments are displayed side by side. The sale and distribution of "draw" or "deal" packages 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. 9. There are in the United States, many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy, and who sell their "straight goods" candy in interstate commerce in competition with the "draw" or "deal" 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 features connected with the "draw" or "deal" candy.

PAR. 10. In addition to the assortments described in paragraph 2 and 3 herein the respondent manufactures candy which it sells to retail dealers, wholesale dealers and jobbers without any lottery or chance feature. An officer of the respondent corporation testified that the annual sales of respondent amounts approximately to \$1,200,000.00. This figure includes both the "straight" merchandise and the "draw" or "deal" assortments, and while the exact proportions of each is not disclosed, yet the testimony shows, and the Commission finds, that the respondent has been and is distributing numerous assortments involving the sales plans or principles described in paragraphs 2 and 3 hereof.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy so packed and assembled as to enable retail dealers without alteration, addition or rearrangement to resell the same to the consuming public by lot or chance, is contrary to public policy.

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CONCLUSION

The aforesaid acts and practices of the respondent, Chase Candy Company, a corporation, 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 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and other evidence in support of the charges of the complaint taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, no answer having been filed by the respondent and no testimony having been offered in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated an Act of 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, Chase Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, 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 retailers, 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, or may be 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 assortment to the public.

3. Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy together with a device commonly called a "push card" for use or which may be used in distribution of said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers and retail dealers a device commonly called a "push card", either with assortments of

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candy, or separately, and bearing a legend or legends or statements informing the purchaser that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Chase 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
JEFFERSON EDUCATIONAL COMPANY, TRADING AS
BOYD BUSINESS UNIVERSITY

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

Docket 2631. Complaint, Nov. 15, 1935—Decision, Nov. 10, 1936

Where a corporation engaged in conducting a business school in the District of Columbia, and in advertising and offering for sale and selling courses of instruction in accountancy, secretarial work, bookkeeping, stenographic courses, commercial law, and other related branches, and in advertising, offering, and selling to the purchasing public certain text books, including "Boyd's Shorthand System"—

(a) Adopted and used a trade name, including words "Business University," and featured said trade name in radio broadcasts, newspapers, booklets, circulars, and other advertising media having circulation in the aforesaid District and in many of the States, and displayed said name, together with the words "Washington, D. C.," on the back of a catalog widely distributed by it in said District, to students and prospective students;

The facts being its courses of instruction were limited and confined to business subjects, as above indicated, and it did not offer instruction in any of the higher branches of learning, and was not empowered to confer, and did not confer degrees, its instructors were not all graduates of colleges or universities, and its organization did not constitute a university as understood by scholastic people and the public generally;

(b) Included in its aforesaid catalogs, on the back of which appeared, as above set forth, its trade name of "Boyd Business University," a facsimile of a purported diploma given to students finishing their courses at its said institution, and bearing the signature of "Robt. Boyd, President," and a paragraph describing the Boyd Shorthand System, together with a picture of the aforesaid individual;

The facts being that said individual, who conducted and maintained a business school in Chicago, originated in 1901 the aforesaid popular and esteemed system, used to a substantial extent and taught in universities, high schools, and other educational institutions throughout the United States and in many foreign countries, and published and sold in the United States certain shorthand books and dictionaries embodying the principles of his said system, was not the president of said "Boyd Business University"; and

(c) Included and linked its said name with that of F. P. Baker & Company, London, England, on the title page of a shorthand textbook offered and sold by it, through the words "Boyd Shorthand System * * * by Robt. Boyd, B. A., published by Boyd Press, Chicago, Illinois—Sidney, Australia, Boyd Business University, Washington, D. C., F. P. Baker & Company, London, England";

Notwithstanding fact that there was no connection between it and said Baker & Company, and it was not the exclusive American representative of said textbook;

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With capacity and tendency to mislead and deceive prospective students and purchasers of textbooks into the erroneous belief that it conducted a university as ordinarily accepted and understood by the public, aforesaid Robt. Boyd was president thereof, there was some connection between it and said English Company, and it was exclusive American representative of said textbook, and to induce such students and purchasers, acting in such erroneous belief, to enroll and pay for its courses of instruction, and attend its school and purchase its textbooks in preference, respectively, to other schools and other textbooks, and thereby unfairly divert trade to it from competitors, including those in said District, offering courses of instruction in business education equal in every essential particular to its own, and who mostly do not represent in any manner that they conduct a "university" or a "business university," or misuse said term, or falsely represent international connections, or through other false and misleading statements misrepresent the exact nature, connections, and character of their respective institutions; to the substantial injury of competition in commerce:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. George R. Jackson, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that Jefferson Educational Company, a corporation, trading as Boyd Business University, 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, Jefferson Educational Company, trading as Boyd Business University, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located in the city of Washington, in the District of Columbia. It is now and for more than one year last past has been engaged in conducting a business school under the name and style "Boyd Business University" wherein instruction is given in such branches as shorthand, accountancy, secretarial work, bookkeeping, commercial law and other related branches, and in advertising, offering for sale and selling to its

students and others a textbook entitled "Boyd Shorthand System." In the course and conduct of its business respondent is and was at all times herein referred to in active and substantial competition with other corporations and with persons and firms similarly engaged in the conduct of business schools and in the sale of textbooks in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent uses and used the following methods and practices:

(a) Adopted as and for a trade name under which to carry on its business the words "Boyd Business University" and used said name containing the word "University" in advertisements of its courses of instruction and books and in selling and offering for sale courses of instruction and books. In truth and in fact, the said school was not and is not a university and the respondent did not at any time herein referred to conduct an educational institution or extension thereof which was organized for teaching and study in the higher branches of learning, nor did it, nor does it, have power to confer degrees in the higher branches of learning, such as theology, law, medicine, and the arts.

(b) Respondent widely distributes in the District of Columbia to students and prospective students an advertising catalog on the front of which appears the words "Boyd Business University, Washington, D. C." In said catalog, which respondent distributes as aforesaid, appears a facsimile of the diploma given to students bearing the signature of Robt. Boyd as president. Also appearing in said catalog is a descriptive paragraph of the Boyd shorthand system with a picture or portrait of Robt. Boyd, together with the words "originator of the Boyd shorthand and the leading character of the Boyd schools located in the principal cities". In truth and in fact Robt. Boyd is not the president of "Boyd Business University" and has no connection whatever with Boyd Business University or Jefferson Educational Company.

Robt. Boyd conducts and maintains a business school in Chicago, Ill. He originated in the year 1901 Boyd's Shorthand System which is used to a substantial degree throughout the United States. He publishes and sells in the United States and in certain British possessions shorthand text books and dictionaries embodying the principles of this system. Boyd's Shorthand System is taught in universities, high schools, business colleges and other educational institutions throughout the United States and in many foreign countries, and Boyd's system of shorthand enjoys widespread popularity and good will on

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the part of students and prospective students in the various States of the United States.

(c) Respondent offers for sale and sells to its students and prospective students and others a shorthand book upon the title page of which appears the following:

BOYD SHORTHAND
SYSTEM
A SYSTEM OF SHORTHAND IN WHICH
CHARACTERS REPRESENT
SYLLABLES.

This System Greatly Simplifies the Signs.
It May be Learned in One Fifth of the
Time Required for Other
Systems.

by
ROBT. BOYD, B. A.

Published by
BOYD PRESS
Chicago, Illinois—Sidney, Australia

BOYD BUSINESS UNIVERSITY—WASHINGTON, D. C.
F. P. BAKER & CO.—London, England.

In truth and in fact there is no connection now and there has never been any connection between respondent and F. P. Baker & Co., London, England. F. P. Baker & Co. is the London representative of the publisher of the Boyd text book. The use of the name F. P. Baker & Co., by respondent as hereinabove set out implies that respondent is in some way connected with F. P. Baker & Co., and imports that F. P. Baker & Co., is the London representative of the said text book, and that respondent is the exclusive American representative, when such is not the fact.

PAR. 3. The use of the portrait of Robt. Boyd in respondent's catalog and the facsimile of the diploma, as hereinbefore set out, and the reading matter in connection therewith, has the capacity and tendency to confuse, mislead and deceive the public into the belief that Robt. Boyd is the president of Boyd Business University and otherwise connected therewith, and to cause prospective students to attend the Boyd Business University in preference to some other institution, because of that belief, when, as a matter of fact, said Robt. Boyd has no connection with said institution. The manner in which the name "Boyd Business University, Washington, D. C." appears on the title page of the Boyd shorthand book sold and offered for sale to students and prospective students, has the capacity and tendency to lead the public to believe that there is a connection between

respondent and F. P. Baker & Co., London, England, when in truth and in fact there is no such connection. The use of the trade name, "Boyd Business University", as hereinabove set out has the capacity and tendency to confuse, mislead and deceive the public into the belief that respondent conducts an educational institution or extension thereof which is organized for teaching and study in the higher branches of learning and that it has the power to confer degrees in special departments, such as theology, law, medicine, and the arts.

PAR. 4. There are among the competitors of said respondent, referred to in paragraph 1 hereof, individuals, partnerships, and corporations who operate and conduct schools for business training similar to that of respondent who do not seek to add to their prestige by falsely representing connections with other persons or institutions, and who do not in any way falsely represent that they conduct universities.

Respondent's acts and practices, as in this complaint before set out, tend to unfairly divert business from and otherwise injure and prejudice said competitors.

PAR. 5. The above alleged acts and practices of the 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 on November 15, 1935, issued and served its complaint in this proceeding upon respondent, Jefferson Educational Company, trading as Boyd Business University, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney of the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by George R. Jackson, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final

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hearing before the Commission upon the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in defense thereto, the oral arguments of counsel aforesaid having been waived, and the Commission having duly considered the same and being now 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jefferson Educational Company, trading as Boyd Business University, is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its office and principal place of business in the city of Washington, in the District of Columbia. It is now, and for more than 10 years last past has been engaged in conducting a business school in the District of Columbia under the name and style of "Boyd Business University", advertising and offering for sale and selling courses of instruction in such branches as accountancy, secretarial work, bookkeeping, stenographic courses, commercial law and other related branches. In the course and conduct of its said business it also advertises, offers for sale and sells to the members of the purchasing public certain textbooks, including one entitled "Boyd's Shorthand System". Respondent's school has from 400 to 500 students living in the District of Columbia, State of Virginia, and other nearby States. Its sales of textbooks, direct or by mail, amount to several thousand dollars annually. During all the times mentioned herein respondent has sold the textbooks in a constant course of trade and commerce between and among the various States of the United States, and in the District of Columbia. In the course and conduct of its said business it causes the said textbooks when sold to be transported from its place of business aforesaid into and through the District of Columbia and the various States of the United States to purchasers thereof, some located in the District of Columbia, and some located at various other points in the United States.

PAR. 2. In the course and conduct of its said business respondent is in substantial competition with other corporations, and with persons, firms, partnerships, and individuals likewise engaged in the sale of kindred courses of instruction, and of textbooks in the District of Columbia, and in the sale of textbooks in trade and commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid respondent in soliciting the sale of, and selling its courses of instruction

and textbooks, adopted and used, and now uses as and for its trade name the words "Boyd Business University", and causes said trade name to be featured in radio broadcasts, newspapers, booklets, circulars, and other advertising media having circulation in the District of Columbia, and in many of the States of the United States.

It widely distributes in the District of Columbia to students and prospective students a catalogue, on the back of which appear the words:

BOYD BUSINESS UNIVERSITY,

WASHINGTON, D. C.

In said catalogue there appears the facsimile of a purported diploma given to students finishing their courses at said institution bearing the signature of "Robt. Boyd, President". There also appears in said catalogue a paragraph describing the Boyd Shorthand System, together with a picture of Robert Boyd. Robert Boyd conducts and maintains a business school in Chicago, Illinois. He originated a system of shorthand in the year 1901 known as "Boyd's Shorthand System", which system is used to a substantial extent throughout the United States. He publishes and sells in the United States certain shorthand books and dictionaries embodying the principles of his system. Such shorthand system is taught in universities, high schools, and other educational institutions throughout the United States and in many foreign countries, and it enjoys great popularity and goodwill on the part of students and prospective students throughout the United States. Robert Boyd is not the president of "Boyd Business University".

Among the textbooks offered for sale and sold by the respondent is a shorthand textbook on the title page of which appears the following:

BOYD SHORTHAND

SYSTEM

A SYSTEM OF SHORTHAND IN WHICH CHARACTERS

REPRESENT SYLLABLES

* * * *

BY ROBT. BOYD, B. A.

PUBLISHED BY

BOYD PRESS

CHICAGO, ILLINOIS, — SIDNEY, AUSTRALIA

BOYD BUSINESS UNIVERSITY, WASHINGTON, D. C.

F. P. BAKER & COMPANY, LONDON, ENGLAND.

In and by the use of the words set forth on said title page of said shorthand book respondent represents that there is a connection between it and F. P. Baker & Company, London, England, and that F. P. Baker & Company is the London representative of the said textbook and that respondent is the exclusive American representative of said textbook. There is no connection between respondent and F. P. Baker & Company, London, England, nor is the respondent the exclusive American representative of Boyd's Shorthand Textbook.

PAR. 4. The word "University" as understood by scholastic people and by the public generally means an educational institution of higher learning empowered to confer degrees in the courses of instruction offered, and where degrees are conferred in the higher branches of learning, including the special branches of law, medicine, theology, education, engineering and music. Respondent's courses of instruction are limited and confined to business subjects, such as shorthand, typewriting, accounting, penmanship, letter writing, secretarial practice, business English, business letter writing, spelling, business arithmetic, commercial law, commercial French and Spanish, and business administration.

Respondent does not offer instruction in any of the higher branches of learning; it does not confer degrees of any nature and it does not have the power to confer degrees; its instructors are not all graduates of colleges or universities. The respondent and its organization do not constitute a university.

The word "University" even when coupled with the word "Business" is understood by the public to designate a higher type of school than the ordinary business school and carries with it a greater prestige in the field of business education than does the term "School". The competitors of respondent located in the District of Columbia offer courses of instruction in business education that are equal in every essential particular to those offered by respondent and most of those competitors do not represent in any manner that they conduct a "University" or a "Business University".

PAR. 5. Respondent's representations and statements, as hereinbefore set forth, have the capacity and tendency to mislead and deceive prospective students and purchasers of textbooks into the erroneous belief that respondent conducts a university in the sense that such term is ordinarily accepted and understood by the public; that Robert Boyd is the President of such University; that there is some connection between respondent and F. P. Baker & Company, of London, England, for which company respondent is the exclusive American representative of the Boyd Shorthand textbook; and such representations and statements have the capacity and tendency to

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induce prospective purchasers and students, acting in such erroneous belief, to enroll and pay for respondent's courses of instruction, attend respondent's school in preference to other schools, and purchase respondent's textbooks in preference to other textbooks, thereby unfairly diverting trade to respondent from its competitors who do not by the misuse of the term "University", or by falsely representing international connections, or by any other false and misleading statements misrepresent the exact nature, connections and character of the institutions of learning by them conducted, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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 Jefferson Educational Company, trading as Boyd Business University, its officers, directors, agents, representatives, servants and employees in connection with the offering for sale, sale, or distribution in commerce between or among the various States of the United States, and in the District of Columbia, of courses of instruction or textbooks, cease and desist from;

1. Representing, directly or indirectly, through the use of the word "University" in its trade name, or in any manner, that it conducts a university or institution of higher learning;

2. Representing, through the use of the name "Robert Boyd" or a portrait of Robert Boyd, or his signature on diplomas as President,

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or in any other manner, that Robert Boyd is President of respondent's educational institution;

3. Representing, directly or indirectly, through the use of the phrase "F. P. Baker & Company, London, England", or any other phrase, in conjunction with the name of respondent that respondent and said "F. P. Baker & Company, London, England", are connected or affiliated business or educational organizations or institutions.

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

Syllabus

IN THE MATTER OF

M. BERGER AND A. BERGER, TRADING AS WEARWELL
KNITTING MILLS

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

Docket 2670. Complaint, Dec. 26, 1935—Decision, Nov. 10, 1936

Where partners engaged in sale and distribution of knitted goods, substantially all of which products were made in factories or mills owned by others, from yarn furnished by said firm, on a contract basis and at a specified price, and in which factories said firm owned no interest and over which they had no control of any nature—

Adopted and used a trade name including words "Knitting Mills" in connection with sale of their products, and made use of same on letterheads, order blanks, and otherwise, in soliciting sale of and selling such products;

Notwithstanding the fact that not more than 5 percent of the total amount of goods sold by them was made on a machine at their place of business and used solely for manufacture of heavy sweaters during the fall season, and remainder of goods which they sold was made for them by others, as hereinbefore set forth;

With capacity and tendency to mislead and deceive many of their customers and prospective customers into the erroneous belief that they owned, operated, or controlled a mill or factory in which their said products were made, and into the erroneous belief that persons and concerns buying their said garments were purchasing same directly from the manufacturer, as preferred by certain retailers as cheaper and as eliminating middleman's profit through dealing directly with mill owner or manufacturer, and as providing various other advantages not to be had by buying from others, and with effect of unfairly diverting business from and otherwise injuring and prejudicing their competitors, including those who make their garments and rightfully represent themselves as manufacturers thereof, and those who purchase such products dealt in by them and do not represent themselves as manufacturers thereof; to the substantial injury of competition:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg 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 M. Berger and A. Berger, copartners trading and doing business under the name and style of Wearwell Knitting Mills, hereinafter referred to

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as the respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public, the said Federal Trade Commission hereby issues its complaint against the respondents and states its charges in that respect as follows:

PARAGRAPH 1. That the respondents, M. Berger and A. Berger, are copartners trading under the name and style of Wearwell Knitting Mills with their principal place of business located in the city of New York in the State of New York. That said respondents are and have been for several years last past engaged in selling knitted garments and other apparel to purchasers located in a State or States other than the State of New York, and, pursuant to such sales and as a part thereof, cause and have caused said knitted garments and other apparel so sold to be transported from their place of business in the State of New York into and through States other than the State of New York to said purchasers in the State or States in which they are located.

PAR. 2. That during all of said time stated in paragraph 1 hereof, there have been and now are other persons, firms, and corporations engaged in the business of manufacturing and selling knitted garments and other apparel similar to those sold by respondents and pursuant to such sales and as a part thereof have caused such commodities to be shipped to customers located in States other than the State of origin of such shipments, and with such other persons, firms, and corporations, respondents have been and are in substantial competition.

PAR. 3. That the said respondents, M. Berger and A. Berger, in the course and conduct of their business as described in paragraph 1 hereof, adopted as and for their trade name the words "Wearwell Knitting Mills," which trade name containing the words "Knitting Mills," the said respondents use and have used on their invoices, letterheads, labels, and otherwise in soliciting the sale of and selling their goods in interstate commerce as aforesaid; that in addition to the said trade name "Wearwell Knitting Mills" the respondents' said invoices and letterheads contain the words "Manufacturers of High Grade Sweaters, Bathing Suits and Knitted Novelties" and other words and representations to similar effect; that in truth and in fact the said respondents have not manufactured and do not manufacture the products so sold by them; and that said respondents have not owned or controlled and do not own or control the mill or mills or factory or factories in which the products sold by them are knitted or manufactured, but, on the contrary, fill their orders with products

which are knitted or manufactured in a mill or factory or in mills or factories which they neither own, operate, nor control, with the exception that the respondents operate only during a few months of each year one small knitting machine in the rear of their store on which are knitted a few sweaters of a certain type which constitute only a negligible percentage of the knitted goods sold by respondents as aforesaid.

PAR. 4. That the use by the respondents of the words "Knitting Mills" in their trade name as aforesaid and the words "Manufacturers of High Grade Sweaters, Bathing Suits and Knitted Novelties" on their invoices and letterheads and otherwise has the capacity and tendency to mislead and deceive and does mislead and deceive many of the respondents' customers and prospective customers into the erroneous belief that the respondents operate or control a mill or mills in which the products sold by respondents as aforesaid are manufactured and that persons buying garments and other apparel sold by respondents are buying same directly from the mills and from the manufacturers thereof, thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. That there are among the competitors of respondents referred to in paragraph 2 hereof, many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof; that there are others of said competitors who purchase the garments in which they deal and resell same and who in no wise represent that they manufacture said garments; and that the aforesaid acts and practices of the respondents in representing that they own or operate mills in which the products sold by them are manufactured tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. That the aforesaid acts and things done by the respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce within the intent and meaning of Section 5 of the said Act of Congress hereinabove entitled.

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 26th day of December 1935, issued and served its complaint in this proceeding upon the respondent, M. Berger and A. Berger, partners, trading as Wearwell Knitting Mills,

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charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (neither of said respondents filed answer) testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by M. Berger, one of the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint (respondents did not file brief) and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents M. Berger and A. Berger are partners trading and doing business as Wearwell Knitting Mills with their principal place of business located in the city of New York, State of New York. They are now and have been continuously since the year 1923 engaged in the sale and distribution of similar products in commerce between and among the various States of the United States. They have caused and now cause their said products when sold by them to be transported from their place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. They are now and have been at all times hereinafter mentioned in substantial competition with other partnerships and with individuals, firms, and corporations engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 2. In the year 1923 respondents adopted and, at all times hereinafter mentioned, have used and now use as and for their trade name the words "Wearwell Knitting Mills" in connection with the offering for sale and sale of their products in commerce among and between the various States of the United States, and have caused and cause their said trade name to be used on their letterheads, order blanks, and otherwise in soliciting the sale of and selling their said products in interstate commerce. In and by their trade name through the use of the word "Knitting" and of the word "Mills" respondents represent that they own, operate, and control a mill and that the products sold by them are and were manufactured by them.

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Substantially all of the products sold by respondents are and were manufactured in factories or mills owned by others and such products are and were made from yarn furnished by respondents and are and were made for respondents on a contract basis at a specified price per dozen. Those making said products for respondents have had and still have complete supervision and control over their own factories and respondents do not have and did not have any control of any nature over said factories nor do they own any interest in such factories.

Respondents have at their place of business in New York one knitting machine which they use for the sole purpose of manufacturing heavy sweaters during the fall season. Such machine is not in use for more than two months during any part of the year. As a matter of fact respondents' output on their own machine does not and did not amount to more than 5 percent of the total amount of the goods sold by them. The remainder of the goods sold by them were manufactured for them by others as hereinbefore set out.

PAR. 3. There is a preference on the part of certain retail merchants of knitted garments and other wearing apparel to deal directly with the mill owner and manufacturer thereof. There is an impression and belief existing among certain said retail merchants that they can buy goods at a cheaper price and that they can eliminate a middleman's profit by dealing directly with the mill owner or manufacturer. The use by the respondents of the words "Knitting" and "Mills" in their trade name has had and has the capacity and tendency to mislead and deceive many of the respondents' customers and prospective customers into the erroneous belief that the respondents' own, operate, or control a mill or factory, or mills or factories, in which the products sold by the respondents, as aforesaid, are manufactured, and into the erroneous belief that persons, firms, partnerships, and corporations buying said garments sold by said respondents are buying said garments directly from the manufacturer thereof and are thereby eliminating profits of the middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

The aforesaid acts and practices of the respondents, in which they represent that they own, operate, or control mills or factories in which the products sold by them are manufactured tend to, unfairly divert business from and otherwise injure and prejudice respondents' competitors; thereby respondents do substantial injury to competition in interstate commerce.

PAR. 4. There are among the competitors of respondents referred to in paragraph 1 hereof many who manufacture the garments which

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they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same and who do not represent that they manufacture said garments.

CONCLUSION

The aforesaid acts and practices of the respondents M. Berger and A. Berger, partners, trading as Wearwell Knitting Mills are 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 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, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of the Commission filed herein (respondents having filed no brief and oral arguments having been waived) and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondents M. Berger and A. Berger, partners, trading under the name and style of Wearwell Knitting Mills, or trading under any other name, their agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of knitted goods in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Knitting" or "Mills" alone or in conjunction with any other word or words in their trade name, or in any other manner whatsoever, that they own, operate or control a mill or factory in which their said products are knitted or manufactured.

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

Syllabus

IN THE MATTER OF

CHESAPEAKE DISTILLING & DISTRIBUTING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2319. Complaint, Mar. 7, 1935—Decision, Nov. 11, 1936

Where a corporation engaged in the rectifying and bottling of distilled spirits purchased by it from distillers, and with no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash, as long understood from word in trade, in competition with those engaged in manufacture by distillation of whiskies, brandies, and other spirituous beverages, and in sale thereof, and with rectifiers, wholesalers, and jobbers—

Represented, through use of word "distilling" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its products, to wholesale customers, and furnished them with means of similarly representing to their retail dealer vendees and ultimate purchasers, that the whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation; notwithstanding fact it was not a distiller and did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in purchasing the same they were buying a product bottled at a distillery by the original distiller thereof, as substantially preferred by the trade and public, and with the effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation, as above set forth, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Chesapeake Distilling & Distributing Company, a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.

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in said act, and in violation of the act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation organized in 1933, and existing under the laws of the State of Maryland, and has its office and principal place of business at No. 9 South Howard Street, in the city of Baltimore, State of Maryland. Respondent is now and since its organization has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, and other spirituous beverages and selling same at both wholesale and retail. It causes the said products when sold to be transported from the city of Baltimore, in the State of Maryland into the District of Columbia to wholesale purchasers thereof, and in the city of Baltimore, State of Maryland, it sells the said products to both wholesalers and retailers. 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 manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce, both wholesale and retail.

PAR. 2. For a long period of time, the word "distilling" in connection with the liquor industry has had a definite significance to the minds of the purchasers, both wholesale and retail, to wit, the manufacture of such liquors by the process of distillation, and a substantial portion of such purchasers in the District of Columbia aforesaid, prefers to buy such beverages from an original distiller or manufacturer of the same; and a substantial portion of the consuming public in the District of Columbia in purchasing such beverages, prefers to purchase those bottled by the original distiller or manufacturer.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill

the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 4. The representation set forth in the preceding paragraph hereof, is calculated, has a tendency, and operates to mislead and deceive the wholesalers who buy from respondent and the retailers and ultimate purchasers who in turn purchase the said products in the District of Columbia, into the belief that when purchasing such spirituous liquors they are buying a product bottled at a distillery by the original distiller thereof, and this tends to and does unfairly divert trade from respondent's aforesaid competitors to the respondent. The methods and representations aforesaid, used by respondent in connection with its intrastate sales to both wholesalers and retailers, has a tendency to and operates to affect those of its competitors who cause their products when sold, to be shipped from points of origin outside of the State of Maryland, into the State of Maryland for resale there in competition with respondent's products by diverting trade from the customers of such competitors to the respondent.

PAR. 5. The acts and things above alleged to have been done and the false representation alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized in 1933, and existing under the laws of the State of Maryland, and has its office and principal place of business at No. 9 South Howard Street, in the city of Baltimore, State of Maryland. Respondent is now and since its organization has been engaged in the business of rectifying, blending, and bottling whiskies, brandies, and other spirituous beverages and selling same at both wholesale and retail. It causes the said products when sold to be transported from the city of Baltimore, in the State of Maryland into the District of Columbia to wholesale purchasers thereof, and in the city of Baltimore, State of Maryland, it sells the said products to both wholesalers and retailers. 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 manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce, both wholesale and retail.

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PAR. 2. For a long period of time, the word "distilling" in connection with the liquor industry has had a definite significance to the minds of the purchasers, both wholesale and retail, to wit, the manufacture of such liquors by the process of distillation, and a substantial portion of such purchasers in the District of Columbia aforesaid, prefers to buy such beverages from an original distiller or manufacturer of the same; and a substantial portion of the consuming public in the District of Columbia in purchasing such beverages, prefers to purchase those bottled by the original distiller or manufacturer.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 4. The representation set forth in the preceding paragraph hereof, is calculated, has a tendency and operates to mislead and deceive the wholesalers who buy from respondent and the retailers and ultimate purchasers who in turn purchase the said products in the District of Columbia into the belief that when purchasing such spirituous liquors they are buying a product bottled at a distillery by the original distiller thereof, and this tends to and does unfairly divert trade from respondent's aforesaid competitors to the respondent. The methods and representations aforesaid, used by respondent in connection with its intrastate sales to both wholesalers and retailers, has a tendency to and operates to affect those of its competitors who cause their products when sold, to be shipped from points of origin outside of the State of Maryland, into the State of Maryland for resale there in competition with respondent's products by diverting trade from the customers of such competitors to the respondent.

PAR. 5. Under and pursuant to Title I of the National Industrial Recovery Act (Public No. 67, 73rd Congress), the President of the United States, by Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933 and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

That under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded all interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) To remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved report, recommendations and findings of the said Secretary of Agriculture and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the provisions of said Code became and still are the standards of fair competition for the Distilled Spirits Rectifying Industry and are binding upon every member of said Industry and this respondent.

Article V of said Code in part provides:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. An advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

PAR. 6. The use by respondent of the word "distilling" in its corporate name, printed upon its stationary and on the labels attached to the bottles in which it sells and ships such products, by ambiguity, omission, or inference tends to create the misleading impression that respondent is engaged in the business of distilling spirits, contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 7. The above alleged methods, acts, and practices of the respondent are, and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in interstate commerce and in other transactions which affect interstate commerce in the manner set forth in paragraph 4 of count 1 hereof, are in violation of Section 3 of the National Industrial Recovery Act, are to the prejudice of the public and the 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," 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 March 7, 1935, issued, and on March 8, 1935, served its complaint in this proceeding upon respondent Chesapeake Distilling & Distributing Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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 was incorporated November 24, 1933, under the laws of the State of Maryland, with a capital stock of \$100,000.00, divided into four thousand shares. Becoming equipped and organized to rectify, blend, and bottle whiskies, brandies, and other alcoholic beverages, in March of 1934, it engaged in that business as a rectifier of distilled spirits under a basic permit from the Federal Government, and at the time of the taking of testimony herein was still so engaged, with its principal office and place of business at No. 9 South Howard Street, in the city of Baltimore in said State.

After bottling, it sells the aforesaid distilled products or blends and mixtures thereof, and causes them, when sold, to be transported from Baltimore, Md., principally into the District of Columbia, with occasional sales and shipments to Delaware and Kentucky—to the purchasers thereof, who are either wholesalers or retail dealers. Approximately 50 percent of respondent's business transactions are in interstate commerce.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations, individuals, and partnerships engaged in the manufacture by distillation of whiskies, brandies, and other spirituous beverages and the sale and distribution of the same in interstate commerce; and also in competition with other rectifiers, wholesalers, and bottlers.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete.

Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the —— Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by —— Company". If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by —— Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-197" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchases its distilled spirits from distillers both within and outside of Maryland; does little rectifying and mostly bottles the purchased whiskies straight at 100 proof.

This respondent does not now have, and has never had, stills or other apparatus for the production of distilled spirits by an original and continuous distillation from mash, wort or wash. For a long period of time, the word "distilling" in connection with the liquor industry has had, and still has, a definite significance to the minds of purchasers, both wholesale and retail, to wit: the manufacture of such liquors by the process of distillation from some kind of mash.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of

the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life, namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employees, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant and a graduate law student. Their testimony showed that the word "distilling," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondent's, such a word as "distilling" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their judgment, was likely to be more trustworthy and had more at stake than any middleman. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion based upon such experience that in the majority of cases, the ultimate consumer prefers to buy distillery bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold and transported.

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PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference for buying liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distilling" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whisky.

The use by respondent of the term "distilling" in its trade or corporate name upon its invoices, stationery, advertising, and upon the labels attached to the bottles in which it sells and ships its spirituous liquors has a tendency to mislead and deceive wholesalers, retailers and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distiller thereof and this, in turn, tends to and does unfairly divert trade from respondent's competitors to the respondent. Among such competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort, or wash, do truthfully designate themselves as distilling companies and also among such competitors are those in the same class with this respondent, to wit; those who are engaged in that branch of the industry known as the distilled spirits rectifying industry and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

PAR. 6. The complaint herein was issued April 22, 1935 (which was prior to the decision of the United States Supreme Court, May 27, 1935, in the case of *A. L. A. Schechter Poultry Corporation, et al., vs. United States*, 295 U. S. 495) and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision.

For this reason the Commission is of the opinion that the complaint should be dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Chesapeake Distilling & Distributing Company, a corporation, 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 approved September 26, 1914, en-

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Order

titled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission and by Horace J. Donnelly, Jr., counsel 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 the respondent Chesapeake Distilling & Distributing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of whiskies, brandies, and all other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing through the use of the word "Distilling" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by words of like import, (a) that it is a distiller of whiskies, brandies or any other spirituous beverages; (b) that the said whiskies, brandies, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or mash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

It is further ordered, That the said complaint be, and the same is hereby, dismissed as to count 2 thereof.

IN THE MATTER OF
UCANCO CANDY COMPANY, INC.

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

Docket 2612. Complaint, Nov. 4, 1935—Decision, Nov. 11, 1936

Where a corporation engaged in manufacture and sale of candy, arranged, with push cards, as "draw" or "deal" assortments, principal trade demand for which comes from the small retailers, with stores, in many instances, near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering the opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, the largest class by far of purchasers and consumers of such type of candy, who buy the same in preference to the so-called "straight" goods when displayed side by side, by reason of the lottery or gambling feature connected with the former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of the so-called "draw" or "deal" merchandise—

Sold to wholesale dealers and jobbers located in practically all the States of the United States east of the Rocky Mountains, together with push cards, (1) assortments in which the number disclosed by chance on the card by purchaser determined whether such purchaser received one of the candy bars making up such assortment free of charge, or paid an amount ranging from 1¢ to 5¢, as the case might be, for such bar, and (2) assortments in which the penny purchaser received, depending upon the number pushed by chance or the making of the last push in each of the sections into which the board was divided, a small piece, one of the larger pieces or bars, or one of the still larger bars for such purchaser's penny; so packed and assembled that such various assortments could be displayed and offered by the numerous retail dealers, purchasers thereof from its own wholesale or jobber customers, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to the public by lot or chance by retail dealers therein; in violation of public policy, and in competition with some manufacturers who had begun sale and distribution of candy for resale to the public by lot or chance to meet competition of those who sell and distribute candy sold by such methods and in demand; With result that the public and its competitors were prejudiced and injured, and trade was diverted to it from said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Cook & Balluff, of Davenport, Iowa, 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 Ucanco Candy Company, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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 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. Respondent for several years last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in several of the States of the United States and causes its said products when so sold to be transported from its principal place of business in the city of Davenport, Iowa, to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of its said business respondent is in competition with other corporations, and with individuals and partnerships engaged in the manufacture of candy 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 herein respondent sells and has sold to wholesale and retail dealers various 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.

Certain of said packages are hereinafter described for the purpose of showing the details of the methods used by respondent, but this list is not all inclusive of the various sales plans which respondent has been or is using to distribute candy by lot or chance.

(a) Several of the said assortments are composed of a number of bars of candy of uniform quality, size, and shape together with a device commonly called a push card. The bars of candy are sold to the consuming public at varying prices and the price which a purchaser or consumer pays is determined in the following manner:

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The push card has a number of partially perforated disks and when a disk is pushed from the card a retail price is disclosed and this is the price which that particular customer pays for one of the bars of candy. The retail price on said disks are effectively concealed from the consumer until a selection has been made and the disk separated from the card. In some of the assortments the prices are 0¢, 1¢, 2¢, and 3¢. In other assortments the prices are 1¢, 2¢, 3¢, 4¢, and 5¢. The push cards in said assortments bear legends or statements advising customers or prospective customers that the candy in said assortments is being sold in accordance with the above described sales plans. The fact as to whether a customer obtains one of the bars free or pays 1¢, 2¢, 3¢, 4¢, or 5¢ is thus determined wholly by lot or chance.

(b) Other assortments consist of a number of smaller pieces of candy, a number of larger bars of candy and a number of giant bars of candy together with a device commonly called a push card. The candy in said assortments is to be distributed to purchasers in the following manner:

Sales are 1¢ each and when a push is made a number is disclosed. Certain numbers entitle the purchaser to receive one of the smaller pieces of candy, other numbers entitle the purchaser to receive one of the larger bars of candy. The push card is divided into a number of sections and the purchaser of the last push in each section is entitled to receive one of the giant bars of candy. The push card bears legends or statements informing the customers and prospective customers as to which numbers receive one of the small pieces of candy and which numbers receive one of the larger bars of candy. The numbers on the said disks or pushes are effectively concealed from the consuming public until a selection has been made and the disk or push separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger bars of candy or one of the giant bars of candy at a price of 1¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells said assortments resell the same to retail dealers and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale in connection with the aforesaid push cards and sell said candy 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 sales plans hereinabove set forth as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

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The sales plans and methods of respondent as above described also appeal to the gambling instinct of the consumers of candy and said candies are sold to the consuming public by means of such appeal rather than on the basis of merit or value and a large number of the ultimate purchasers of respondent's said candies are minors.

PAR. 4. The sale of candy to the purchasing public as above alleged invoices a game of chance or the sale of a chance to procure additional or larger pieces of candy or packages of candy in the manner alleged. Such games of chance and the sale along with the sale of such candy of such chance to procure such additional or larger pieces of candy or packages of candy in the manner alleged are contrary to the established public policy of the several States of the United States 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, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged or 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 additional or larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 competitor of respondent who do not use the same or equivalent methods. 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 methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods 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 equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said methods, 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 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 methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, MODIFIED 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 November 4, 1935, issued and served a complaint upon the respondent, Ucanco Candy Company, Inc., a corporation, charging that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

Respondent filed answer to said complaint, and thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded in the files of the Commission.

The respondent was represented by Walter N. Balluff, Esq., but offered no evidence and called no witnesses in opposition to the charges of the complaint. Thereafter, the proceeding came regularly on for final hearing on said complaint and the testimony and other evidence and brief in support of the complaint (respondent, through its counsel, having advised that it did not desire to file brief or to orally argue the matter) and the Commission having duly con-

sidered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. 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 several years last past has been engaged in the manufacture of candy in Davenport, Iowa, and in the sale and distribution of said candy to wholesale dealers and jobbers located in practically all the States of the United States east of the Rocky Mountains. It causes said candy when sold to be shipped or transported from its principal place of business in the State of Iowa to purchasers thereof in Iowa and in the States of the United States, as described above, 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 thereof between and among the various States of the United States.

PAR. 2. Among the candies manufactured and sold by the respondent is an assortment composed of a number of bars of candy of uniform quality, size, and shape, together with a device commonly called a "push card." The bars of candy are sold to the consuming public at varying prices, and the price which a purchaser or consumer pays is determined by use of the said push card in the following manner:

The push card has a number of partially perforated disks, and when a disk is pushed from the card a retail price is disclosed and this is the price the particular customer pays for one of the bars of candy. The retail price on said disk is effectively concealed from a purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The retail prices on the various disks are 0¢, 1¢, 2¢, and 3¢. The push card bears legends or statements advising customers and prospective customers that the candy in said assortment is being sold in accordance with the above described sales plan. The fact as to whether a customer obtains one of the bars free of charge or pays 1¢, 2¢, or 3¢ is thus determined wholly by lot or chance.

The respondent also manufactures and distributes assortments, with which a push card is included, where the retail prices indicated are 1¢, 2¢, 3¢, 4¢ and 5¢. The fact as to whether a customer pays 1¢, 2¢, 3¢, 4¢

or 5¢ for one of the bars of candy is thus determined wholly by lot or chance.

PAR. 3. The respondent also manufactures and distributes several assortments consisting of a number of small pieces of candy, a number of larger pieces or bars of candy, and a number of still larger bars, and a device commonly called a "push card." The push card included with this assortment bears legends at the top thereof stating the manner in which the candy in said assortment is to be distributed to the ultimate purchasers. These legends are as follows:

1¢	SUMMER ADVERTISER	1¢
	Numbers ending in 5 or 0 receives a sample bar. All other numbers receive a quality caramel. Last push in each section receives a giant bar.	

Push : Push : Push : Push : Push : Push : Push : Push

Etc.

The push card has a number of partially perforated disks divided into sections and under each disk is a number which is effectively concealed from the purchaser and prospective purchaser until a push or selection has been made and a particular disk separated from the card. The candy contained in said assortment is distributed to the consuming public in accordance with the legends at the top of said card. Sales are 1¢ each, and the fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces or bars of candy, or one of the still larger bars of candy for the price of 1¢ is thus determined wholly by lot or chance.

PAR. 4. The lottery or prize assortments as described in paragraphs 2 and 3 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments, and assortments of candy without the gaming device or lottery feature 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 those respective types of candy.

PAR. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above from wholesale dealers or jobbers who in turn have purchased said assortments from respondent, and such retail dealers display said assortments for sale to the public as packed by the respondent. Candy contained in said assortments is sold and distributed to the consuming public in the manner described.

PAR. 6. All sales made by respondent are absolute sales and re-

spondent retains no control in any way over the goods after they are delivered to the wholesale dealer or jobber.

An officer of the respondent corporation testified that it carried the several push cards in stock and that it furnished the same to wholesale dealers and jobbers separate from the assortments of candy. Several wholesale dealers and a broker selling respondent's candies testified, and the Commission finds, that the respondent furnished the said push cards along with the assortments of candy, and packed the said push card in boxes containing the candy. The Commission further finds that the assortments are assembled and packed in such manner that they are sold and may be sold by retail dealers to the purchasing public in the manner described, without alteration, addition, or rearrangement.

The Commission, further finds that by reason of the manner in which the respondent packs and assembles these assortments, by reason of his experience in the candy business, and by reason of the testimony of the several witnesses that respondent has knowledge that said assortments will be resold to the purchasing public by retail dealers by lot or chance, respondent assembles such candy in the way and manner described so that without alteration, addition or rearrangement it may be resold to the public by lot or chance by said retail dealers.

PAR. 7. The sale and distribution of candy by retail dealers by the methods described in paragraphs 2 and 3 above is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

There is a 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 to respondent's 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. 8. One of the principal demands in the trade for the "draw" or "deal" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of 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 "draw" or "deal" package and the possibility of becoming a winner, children

purchase candy from such packages in preference to the "straight goods" candy, when the two types of assortments are displayed side by side. The sale and distribution of "draw" or "deal" packages 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. 9. There are in the United States, many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy, and who sell their "straight goods" candy in interstate commerce in competition with the "draw" or "deal" 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 features connected with the "draw" or "deal" candy.

PAR. 10. In addition to the assortments described in paragraphs 2 and 3 herein the respondent manufactures candy which it sells to retail dealers and jobbers without any lottery or chance feature. The exact proportion of the respondent's sales of "straight" merchandise in relation to the sale of the "draw" or "deal" assortments was not shown. However, upon the testimony and other evidence offered the Commission finds that the respondent is distributing numerous "draw" or "deal" assortments as described in paragraphs 2 and 3 hereof, and is selling such assortments in practically all States of the United States east of the Rocky Mountains.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Ucanco Candy Company, Inc., a corporation 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 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and other evidence in support of the charges of the complaint taken before Miles J. Furnas, an examiner of the Commission heretofore duly designated by it, the respondent having offered no testimony or other evidence in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated an Act of 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, Ucanco Candy Company, Inc., a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy products do cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, 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 or jobbers, packages or assortments of candy which are used, or may be 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 assortment to the public.

3. Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy together with a device commonly called a "push card" for use or which may be used in distribution of said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers a device commonly called a "push card", either with assortments of candy, or separately, and bearing a legend or legends or statements informing the purchaser that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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 and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
ERNA SAFFAN, INC., AND ROY M. KIRTLAND

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

Docket 2885. Complaint July 29, 1936—Decision Nov. 11, 1936

Where a corporation and an individual, its majority stockholder and secretary-treasurer and manager and director of its policies and practices, engaged in sale and distribution of a "hair color restorer" or dye preparation named "Youthray"; in advertising the same to the consuming public through numerous advertisements in newspapers and periodicals which circulated among the consuming public throughout the various States, and by means of advertising booklets, circulars, and other printed matter sent by mail and otherwise from their place of business to consumers and prospective consumers in many other States—

- (a) Represented that said preparation would restore hair to its original or natural color, and that it could be used as a hair color restorer without the aid of harmful dyes, and that it brought to gray hair an even, lustrous, youthful color; the facts being that it could not be thus used without the aid of harmful dyes, would not effectively restore the natural color of the hair, or bring it an even, lustrous, youthful color;
- (b) Falsely represented that said preparation was a fine germicide and antiseptic, and therefore beneficial to users thereof, and that it was not a dye, and was harmless to the most delicate scalp and hair; and
- (c) Falsely represented that they employed chemists, or owned, operated, or controlled laboratories;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with the result, as a direct consequence of such mistaken and erroneous beliefs, induced as aforesaid, that a number of the consuming public purchased a substantial volume of said preparation and treatment, and trade was unfairly diverted to them from others engaged in the sale of color restorers and similar preparations and treatments which they truthfully advertise; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr 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 Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, hereinafter referred to as respondents, have been and are now using unfair

Complaint

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, Erna Saffan, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and the respondent, Roy M. Kirtland, an individual, is a majority stockholder in and secretary-treasurer of the respondent, Erna Saffan, Inc., and manages, controls and directs its policies and practices. The principal place of business of both of said respondents is located at 646 N. Michigan Avenue, in the city of Chicago, in the State of Illinois.

Said respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing a "hair color restorer" or dye preparation under the name "Youthray," and cause said preparation, when sold, to be transported from their said principal place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia and there is now, and has been, at all times mentioned herein, a constant current of trade in commerce in said preparation, sold and distributed by the said respondents, between and among the several States of the United States and in the District of Columbia.

In the course and conduct of said business, said respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, were and are in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the manufacture, sale, and distribution of hair color restorers and other like and similar products, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, the respondents, for the purpose of inducing the purchase of their said preparation, have made and do make statements in newspapers, magazines, periodicals, circulars, and other advertising media, circulated among prospective purchasers of said preparation, as to the remedial or restorative qualities of said preparation wherein and whereby they falsely represent and imply that the use of said preparation will (1) effectively restore the natural color of the hair; (2) act on gray hair without the aid of harmful dyes that ruin the health and beauty of hair and scalp; (3) bring to gray hair, regardless of shade, an even, lustrous, youthful color; (4) be beneficial to the head because it is a fine germicide and antiseptic.

By the means and in the manner aforesaid, the respondents also falsely represent and imply that said preparation is not a dye; that it is harmless to the most delicate scalp and hair; and that the respondents employ chemists and own, operate and control laboratories.

Among the statements so made and circulated by the respondents are the following:

Youthray is an effective, desirable treatment for overcoming the trial of gray hair. Harmless to hair, skin and scalp, it gives your hair a look of youthful vigor, bringing a soft, lustrous, even, youthful color. Chemists say that it is actually good for your head, because it is a fine germicide and antiseptic.

* * * and what a tragic moment that is—when gray strands begin to appear. Victims feel themselves “wallflowers”—no longer sought after—no longer admissible to the close comradeship of young folks or those who *stay* young—no longer interesting to members of the opposite sex.

The single woman in business who finds herself becoming gray—the housewife who stares in horror at an increasing crop of gray reflected in her mirror—the business man who knows his age is beginning to show at his temples . . . experience that terrible “slipping away” sensation for which nothing can bring compensation.

Yet such distress—those heartaches—are so wholly unnecessary! Yes, utterly foolish, in fact, since the advent of Youthray, which is able to *banish completely gray hair worries*.

Science (and we mean true modern and authoritative science) has discovered this thoroughly satisfactory method of thwarting the menace of gray hair. It acts so swiftly and sensibly that once you have tried it, you will wonder why you ever tolerated gray hair for a moment or permitted yourself a single pang of worry about it. You will realize that when you found Youthray you made the happiest discovery of your life.

It will do everything you should expect of a preparation for gray hair—and do it without the aid of harmful, irritating poisons or dyes that ruin the health and beauty of hair and scalp. It will bring to your gray hair, regardless of its shade, an even, lustrous youthful color and beauty that you never dared hope to attain.

PAR. 3. The representations and implications made and circulated by the said respondents by the means and in the manner aforesaid, are misleading and deceptive for, in truth and in fact, said preparation will not effectively restore the natural color of the hair; it will not act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp; it will not bring to gray hair, regardless of shade, an even, lustrous, youthful color; it is not beneficial to the head because it is a fine germicide and antiseptic; it is a dye; it is not harmless to the most delicate scalp and hair; and the respondents do not employ chemists or own, operate or control laboratories.

PAR. 4. Each and all of the false and misleading statements and misrepresentations made by the respondents herein by means of ad-

vertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, and in offering for sale and selling the aforesaid preparation and treatment known as "Youthray," was and is calculated to, and had and now has a tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondents as aforesaid, a number of the consuming public purchases a substantial volume of said preparation and treatment known as "Youthray", with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of hair color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices, and representations of the respondents herein have been, and are, all to the prejudice of the public and of respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent 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 29th day of July 1936, issued and served its complaint in this proceeding upon Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondents herein filed an answer thereto, signed by Erna Saffan, president of the respondent corporation, and Roy M. Kirtland, in his individual capacity, in which answer the respondents stated that they waived hearing on the charges set forth in the complaint, that they admitted all of the material allegations of the complaint to be true and that they con-

sented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon them its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter this proceeding regularly came on for final hearing, and the Commission having duly considered the same, and being now 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, Erna Saffan, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and the respondent, Roy M. Kirtland, an individual, is a majority stockholder in and secretary-treasurer of the respondent, Erna Saffan, Inc., and manages, controls, and directs its policies and practices. The principal place of business of both of said respondents is located at 646 N. Michigan Avenue, in the city of Chicago, in the State of Illinois.

PAR. 2. Said respondents are now, and have been for more than one year last past, engaged in the business of selling and distributing a "hair color restorer" or dye preparation under the name "Youthray." Respondents offer for sale, solicit orders therefor, sell and advertise said "Youthray" to the consuming public through and by means of numerous advertisements published by them from time to time in magazines, newspapers, and other periodicals circulating among the consuming public throughout the various States of the United States; and also through and by means of advertising booklets, circulars, and other printed matter, which respondents cause to be sent by mail and otherwise from their place of business in Chicago, Ill., through and into many other States of the United States to consumers and prospective consumers of said "Youthray." As a result of such advertising, solicitation, and offering for sale of said "Youthray," respondents receive from time to time from consumers and other members of the public, numerous purchase orders for said "Youthray," which purchase orders, together with remittances of the purchase price of said product, are sent by mail and otherwise, pursuant to instructions in said advertising matter, from the respective purchasers in the several States of the United States to respondents at their place of business in Chicago, Ill. Upon receipt of said purchase orders, respondents, pursuant thereto, fill said orders and cause said product "Youthray" to be shipped and delivered by them from

their place of business in Chicago, Ill., through and into other States of the United States to the respective purchasers thereof, thus accomplishing and conducting the interstate sale and distribution of said product to the consuming public. In so carrying on their business respondents are and throughout the course and conduct thereof have been engaged in interstate commerce and in direct, active competition with many other individuals, partnerships, and corporation similarly engaged in the sale and distribution, in commerce between and among the various States of the United States, of competing products and of products used for similar purposes.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents, for the purpose of inducing the purchase of their said preparation, have made misleading statements in newspapers, magazines, periodicals, circulars, and other advertising media, circulated among prospective purchasers of said preparation, as to the remedial or restorative qualities of said preparation wherein and whereby it was represented and implied that the use of said preparation will (1) effectively restore the natural color of the hair; (2) act on gray hair without the aid of harmful dyes that ruin the health and beauty of hair and scalp; (3) bring to gray hair, regardless of shade, an even, lustrous, youthful color; (4) be beneficial to the head because it is a fine germicide and antiseptic.

By the means and in the manner aforesaid, the respondents also falsely represented and implied that said preparation is not a dye; that it is harmless to the most delicate scalp and hair; and that the respondents employ chemists and own, operate, and control laboratories.

Among the statements so made and circulated by the respondents are the following:

Youthray is an effective, desirable treatment for overcoming the trial of gray hair. Harmless to hair, skin and scalp, it gives your hair a look of youthful vigor, bringing a soft, lustrous, even, youthful color. Chemists say that it is actually good for your head, because it is a fine germicide and antiseptic.

* * * and what a tragic moment that is—when gray strands begin to appear. Victims feel themselves “wallflowers”—no longer sought after—no longer admissible to the close comradeship of young folks or those who *stay* young—no longer interesting to members of the opposite sex.

The single woman in business who finds herself becoming gray—the housewife who stares in horror at an increasing crop of gray reflected in her mirror—the business man who knows his age is beginning to show at his temples . . . experience that terrible “slipping away” sensation for which nothing can bring compensation.

Yet such distress—those heartaches—are so wholly unnecessary! Yes, utterly foolish, in fact, since the advent of Youthray, which is able to *banish completely gray hair worries*.

Findings

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Science (and we mean true modern and authoritative science) has discovered this thoroughly satisfactory method of thwarting the menace of gray hair. It acts so swiftly and sensibly that once you have tried it, you will wonder why you ever tolerated gray hair for a moment or permitted yourself a single pang of worry about it. You will realize that when you found Youthray you made the happiest discovery of your life.

It will do everything you should expect of a preparation for gray hair—and do it without the aid of harmful, irritating poisons or dyes that ruin the health and beauty of hair and scalp. It will bring to your gray hair, regardless of its shade, an even, lustrous, youthful color and beauty that you never dared hope to attain.

The advertisements hereinabove set out are not now in use and had already been discontinued before the issuance of the complaint herein.

PAR. 4. The representations and implications made and circulated by the means and in the manner aforesaid, are misleading and deceptive. In truth and in fact, "Youthray" will not effectively restore the natural color of the hair, nor will it act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp. "Youthray" will not bring to gray hair, regardless of shade, an even, lustrous, youthful color. It is not a fine germicide and antiseptic and therefore beneficial, as represented, but is a dye and, therefore, is not harmless to the most delicate scalp and hair.

The respondents do not employ chemists or own, operate, or control laboratories.

PAR. 5. There are and have been among the competitors of respondents, in interstate commerce, for more than one year last past, manufacturers and distributors of hair color restorers and similar products, who truthfully advertise and represent the merits and therapeutic value of their products. There are also among such competitors of the respondents, and have been for more than one year last past, manufacturers and distributors of hair color restorers and similar products, who do not advertise and represent that such products have the merits and therapeutic value they have not.

PAR. 6. Each and all of the false and misleading statements and misrepresentations made by the respondents herein by means of advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, and in offering for sale and selling the aforesaid preparation and treatment known as "Youthray," was and is calculated to, and had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondents as aforesaid, a number of the consuming public purchases a substan-

Order

tial volume of said preparation and treatment known as "Youthray," with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of hair color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The above and foregoing acts and practices of respondents herein have been and are, all to the prejudice of the public and of respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on September 25, 1936, by respondents admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the time within which answer may be filed by said respondents be, and the same hereby is, extended from August 23, 1936, to this date, and that the said answer of the respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, be, and the same hereby is received and filed.

It is further ordered, That the respondents, Erna Saffan, Inc., a corporation, and Roy M. Kirtland, an individual, individually, jointly or separately or through or by means of any co-partnership, firm or corporation, and their respective associates, agents, servants, representatives, and employees, in connection with the offering for sale, sale and distribution of hair color restorer, designated by them as

Order

23 F. T. C.

"Youthray," or any product of substantially the same composition and ingredients sold under the name "Youthray" or any other name, manufactured, distributed, and sold by them in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels or any other form of printed matter, or by radio broadcasting, or any other manner:

1. That said color restorer will, when used, restore hair to its original or natural color;

2. That said color restorer can be used as a hair color restorer without the aid of harmful dyes;

3. That said color restorer brings to gray hair, regardless of shade, an even, lustrous, youthful color;

4. That said color restorer is a fine germicide and antiseptic, and therefore beneficial to users thereof;

5. That said color restorer is not a dye;

6. That said color restorer is harmless to the most delicate scalp and hair;

7. That respondents own, operate and control laboratories, staffed by chemists under their employ until and unless such is the case.

It is further ordered, That the said respondents shall, within 60 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.

Syllabus

IN THE MATTER OF
 INTERSTATE DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2372. Complaint, Apr. 22, 1935—Decision, Nov. 13, 1936

Where a corporation, engaged as rectifier of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in selling same in competition with those engaged in manufacture by distillation of whiskies and other spirituous beverages and in sale and distribution thereof, and with other rectifiers and wholesalers, and owning no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, and furnished its wholesale customers with the means of thus representing to retailers and to ultimate purchasers that said whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it was not a distiller and did not distill said whiskies or other liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into belief that in buying said liquors they were purchasing a product bottled at a distillery by the original distiller thereof, as substantially preferred by trade and public, and with effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation from mash, wort, or wash, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Interstate Distillers, Inc., a corporation hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.

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“commerce” is defined in said act, and in violation of the act of Congress approved June 16, 1933, known as the “National Industrial Recovery Act”, and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in Baltimore, in the said State. It is now and since its organization in 1934 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in constant course of trade and commerce, between and among the various States of the United States, and in the District of Columbia. In the course and conduct of its said business, it causes the said products when sold to be transported from its place of business in Baltimore, aforesaid, into and through various other States of the United States to the purchasers thereof consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships and firms engaged in the manufacture by distillation of whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word “distillers” when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, individuals, partnerships or corporations who engage in the manufacture of such liquors by the process of distillation; and a substantial portion of the purchasing

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public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, brandies, rums, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rums, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages who do not use the words "distilleries," "distillery," "distillers," or "distilling" as a part of their corporate names nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rums, and other spirituous beverages sold by the respondent are manufactured and distilled by it and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rums, and other spirituous beverages rectified, blended, and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation of whiskies, brandies, rums, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in Baltimore, in the said State. It is now and since its organization in 1934 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in constant course of trade and commerce, between and among the various States of the United States, and in the District of Columbia. In the course and conduct of its said business, it causes the said products when sold to be transported from its place of business in Baltimore, aforesaid, into and through various other States of the United States to the purchasers thereof consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90) the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance

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with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid Industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of the said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION. 1. False Advertising.—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

PAR. 7. The use by respondent of the word "distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business

of distilling spirits, and that the spirituous beverages by it so sold and transported have been bottled at a distillery by the original distillers thereof, all contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

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 April 22, 1935, issued and served its complaint in this proceeding, upon respondent Interstate Distillers, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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 is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its

principal office and place of business at 36 South Calvert Street, in the city of Baltimore in said State. Originally incorporated January 5, 1934, under the name of "Interstate Wine & Liquor Company", with a capital stock of one thousand shares, valued at \$100 each, its charter authorized it, among other things, to buy, sell, deal in, distill, redistill, manufacture, rectify, blend, import, and export all kinds of alcoholic beverages. By an amendment to its charter, dated February 21, 1934, the name was changed to "Interstate Distillers, Inc."

It is now, and since February 1934 has been, engaged in business as a rectifier of spirituous liquors under a basic permit from the Federal Government, purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and selling the same in constant course of trade and commerce 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, and has been, in competition with other corporations, individuals, and partnerships engaged in the manufacture by distillation of whiskies, brandies, and other spirituous beverages, and in the sale and distribution thereof in interstate commerce; and also in competition with other rectifiers and wholesalers.

Respondent purchases its distilled spirits' requirements from distillers, and about 80% of the liquor put out by respondent is straight whiskey; and the rest, blended whiskey. Occasionally it sells a very small percentage of whiskey in bulk, and supplies some retailers with package goods.

Respondent's plant at the above address is described as follows:

There are offices in the rear on the first floor, and elevator at the front entrance, four or five tanks with a capacity of from 150 to 450 gallons each on the second floor, and on the third floor is the processing room and wholesale room and retail stockroom.

This respondent does not now have, and has never had, stills or other apparatus for the production of distilled spirits by an original and continuous distillation from mash, wort, or wash.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its is-

suance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by ----- Company." If, in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company." Finally, blown (usually in the bottom) in each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz., a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-220" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone,

on the label, whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life; namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employee, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant, and a graduate law student. Their testimony showed that the word "Distillers," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondent's such a word as "distillers" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their judgment, was likely to be more trustworthy and had more at stake than any middle-man. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion, based upon such experience that, in the majority of cases, the ultimate consumer prefers to buy distillery-bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies and other spirituous beverages therein contained, were *by it* manufactured through the

process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference to buy liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distillers" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whiskey.

The use by respondent of the term "Distillers" in its trade or corporate name upon its invoices, stationery, advertising, and upon the labels attached to the bottles in which it sells and ships its spirituous liquors, has a tendency to mislead and deceive wholesalers, retailers, and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distillers thereof, and this, in turn, tends to, and does, unfairly divert trade from respondent's competitors to the respondent. Among such competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort or wash, do truthfully designate themselves as distilling companies, and also among such competitors are those in the same class with this respondent, to wit; those who are engaged in that branch of the industry known as the distilled spirits rectifying industry, and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

PAR. 6. The complaint herein was issued April 22, 1935 (which was prior to the decision of the United States Supreme Court, May 27, 1935, in the case of A. L. A. Schechter Poultry Corporation, et al, vs. United States, 295 U. S. 495) and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act and count 2 charged that the practices of respondent, as herebefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision.

For this reason the Commission is of the opinion that the complaint should be dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Interstate Distillers, Inc., a corporation, 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission and by Horace J. Donnelly, Jr., counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of and Act of 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 Interstate Distillers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of whiskies, brandies and all other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing through the use of the word "Distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, brandies, or any other spirituous beverages; (b) that the said whiskies, brandies or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the said complaint be, and the same is hereby, dismissed as to count 2 thereof.

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

Complaint

IN THE MATTER OF
 MONTEBELLO DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2412. Complaint, May 24, 1935—Decision, Nov. 13, 1936

Where a corporation engaged in purchasing, rectifying, blending, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages, in competition with those engaged in the manufacture by distillation of whiskies and other spirituous beverages, and in sale and distribution thereof, and with other rectifiers and wholesalers, and owning no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash, and not a "distiller" as long understood from word in trade—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, and furnished its wholesale customers with the means of thus representing to retailers and to ultimate purchasers that said whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it was not a distiller and did not distill said whiskies or other liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into belief that in buying said liquors they were purchasing a product bottled at a distillery by the original distiller thereof, as substantially preferred by trade and public, and with effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation from mash, wort, or wash, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. F'Gad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Montebello Dis-

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.

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tillers, 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 violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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 1

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillers" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, those who manufacture such liquors by the process of original and continuous distillation from mash, wort, or

wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade

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to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Maryland and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2, 3, 4, and 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

PAR. 6. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the aforesaid Act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said Code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said Code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by

Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

"SECTION 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression."

PAR. 7. The use by respondent of the word "Distillers" in its corporate name, printed upon its stationery and advertising and on the labels attached to the bottles in which it sells and ships such products and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort or wash, that the spirituous beverages by it so sold and transported have been prepared and bottled by the original distillers thereof, and that the whiskeys, gins, and other spirituous beverages sold by respondent have been manufactured and distilled by it from mash, wort, or wash as aforesaid, all contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

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

Findings

Federal Trade Commission, on May 24, 1935, issued, and on May 28, 1935, served its complaint in this proceeding upon respondent Montebello Distillers, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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 is a corporation organized December 18, 1933, existing and doing business under and by virtue of the laws of the State of Maryland, having its principal office and place of business at 108-110 West Lombard Street in the city of Baltimore in said State. It is now, and has been since its organization, engaged in business as a rectifier of distilled spirits, rectifying, blending, bottling, and selling at wholesale whiskies, gins, and other spirituous beverages.

Respondent purchases its distilled spirits requirements from various distilleries, rectifies some and bottles some straight whiskies. Its sales amount to about \$35,000 a month, about 30% of which volume is sold within the State of Maryland.

In the course and conduct of its said business, respondent sells its products in constant course of trade between and among the various States of the United States and in the District of Columbia. Approximately 70% of the aforesaid distilled products, blends, and mixtures thereof, respondent causes, when sold, to be transported from Baltimore, Md., into and through various other States of the United States including New Jersey, Delaware, Kentucky, and Florida.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations, individuals, and partner-

ships engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and the sale and distribution of the same in interstate commerce; and also in competition with other rectifiers and wholesalers of alcoholic beverages.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the _____ Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by _____ Company." If in the distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by _____ Company." Finally, blown (usually in the bottom) in each bottle is a symbol, consisting of a let-

ter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-561" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchases its distilled spirits from distillers both within and outside of Maryland; does little rectifying and mostly bottles the purchased whiskies straight at 100 proof.

This respondent does not now have, and has never had, stills or other apparatus for the production of distilled spirits by an original and continuous distillation from mash, wort, or wash. For a long period of time, the word "distillers" in connection with the liquor industry has had, and still has, a definite significance to the minds of purchasers, both wholesale and retail, to wit: those who manufacture such liquors by the process of distillation from some kind of mash.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at or by a distillery or distilling company. These witnesses were fairly representative and included men from practically every walk of life, namely, a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, government employee, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy, a syrup salesman, an assistant train yardmaster, coal merchant and a graduate law student. Their testimony showed that the word "distillers," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondent's such a word as "distillers" would imply to them that respondent was such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their

judgment, was likely to be more trustworthy and had more at stake than any middleman. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion, based upon such experience, that in the majority of cases, the ultimate consumer prefers to buy distillery bottled goods. The respondent produced approximately ten witnesses who were retail liquor dealers and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distillers" in its corporate name, printed on its stationery, and on the labels attached to the bottles in which it sells and ships such products, respondent represents, and furnishes its wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, gins, and other spirituous beverages therein contained, were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller and did not distill the said whiskies or other spirituous liquors by it so bottled, sold, and transported.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference to buy liquors bottled by the actual distillers, the tendency to diversion of trade by respondent's use of the word "Distillers" in its name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondent, and the name readily lends itself as a tool to any salesman to be used by him for the purpose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whiskey.

The use by respondent of the term "distillers" in its trade or corporate name upon its invoices, stationery, advertising, and upon the labels attached to the bottles in which it sells and ships its spirituous liquors has a tendency to mislead and deceive wholesalers, retailers and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distiller thereof and this, in turn, tends to and does unfairly divert trade from respondent's competitors to the respondent. Among such

competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort or wash, do truthfully designate themselves as distilling companies and also among such competitors are those in the same class with this respondent, to wit: those who are engaged in that branch of the industry known as the distilled spirits rectifying industry and who, as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

PAR. 6. The complaint herein was issued May 24, 1935 (which was prior to the decision of the United States Supreme Court, May 27, 1935, in the case of A. L. A. Schechter Poultry Corporation, et al., vs. United States, 295 U. S. 495) and contained two counts. Count 1 specifically charged a violation of the Federal Trade Commission Act and count 2 charged that the practices of respondent, as hereinbefore set out, were unfair methods within the meaning of the Federal Trade Commission Act because they were in violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision.

For this reason the Commission is of the opinion that the complaint should be dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Montebello Distillers, Inc., a corporation, 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission, and by Horace J. Donnelly, Jr., counsel 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."

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It is ordered, That the respondent Montebello Distillers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins and all other spirituous beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing through the use of the word "Distillers" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a disfiller of whiskies, gins, or any other spirituous beverages; (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate or control such a place or places.

It is further ordered, That the said complaint be, and the same hereby is, dismissed as to count 2 thereof.

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

Syllabus

IN THE MATTER OF
COSNER CANDY COMPANY

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

Docket 2619. Complaint, Nov. 9, 1935—Decision, Nov. 13, 1936

Where a corporation, engaged in manufacture and sale of candy, including both "straight" goods and "break-and-take" and "draw" or "deal" assortments, in which (1) chance selection of one of penny pieces of chocolate covered candies, of uniform size and shape, enclosed pink colored center of small number of which entitled chance purchaser to one of larger pieces or candy bars included therewith, and chance selection of one of still fewer pieces with yellow center entitled purchaser to one of small boxes of candy similarly included, and purchase of last piece entitled buyer, without charge, to larger box of candy included; (2) chance selection of certain numbers entitled penny purchaser to various pieces from similarly made up assortment, in accordance with legend displayed on push card included, and last number punched out entitled purchaser to large box of chocolates; and (3) in which similar assortments involving same principle or sales plan varied in minor detail and adaptation to seasonal variations, such as Easter candy eggs—

Sold said assortments, in competition with many who are unwilling to adopt or use such or any method involving game or sale of chance as contrary to public policy or criminal statutes of certain States or United States, or as detrimental to public morals or those of purchasers of such candy; with explanatory display and push cards, to wholesalers, jobbers and retailers, knowingly packed, assembled, and designed for display, offer, and sale, without alteration, addition or rearrangement, to consuming, purchasing public by lot or chance by retailers, stores of which, in case of small establishments, are frequently near schools and attract trade of children, principal consumer-purchasers of lottery or prize candy assortments, and buyers thereof, given choice, in preference to "straight" goods because of lottery or gambling feature connected therewith and chance of winning, and sale of which "straight goods" candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of such gambling feature;

With result that many competitors dealing in "straight goods" candies only, who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and some of whom refuse, for said reasons to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, and trade was diverted to it from aforesaid competitors dealing in "straight goods" and able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution of candy to public by lot or chance to meet demand for candy thus sold, sale of such

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refusing competitors "straight" candy showed a continued decrease, public and competitors were prejudiced and injured and there was a restraint upon and a detriment to the freedom of fair competition in said industry, and a violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Cosner Candy 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 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 is a corporation, organized under the laws of the State of Colorado, with its principal office and place of business in the city of Denver, State of Colorado. Respondent is now, and for several years last past has been engaged in the manufacture of candy and the sale and distribution thereof to wholesale 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 place of business in the city of Denver, State of Colorado, to purchasers thereof in other States of the United States, at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products 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 and has sold to wholesale and retail dealers various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when

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sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments manufactured and distributed by respondent consists of a number of small chocolate-covered marshmallow pieces of candy of uniform size and shape, together with a number of larger candy bars and a number of small boxes of candy, and a larger box of candy. The larger bars of candy, the small boxes of candy and the larger box of candy, are to be given as prizes to purchasers of said chocolate-covered marshmallow candies, in the following manner:

The majority of the said chocolate-covered marshmallow candies in said assortment have white centers, but the color thereof is fully concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. A small number of said chocolate-covered marshmallow candies have pink centers, and a still smaller number of said chocolate-covered marshmallow candies have yellow centers. The said pieces of chocolate-covered marshmallow candy, of uniform size and shape, retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a pink center is entitled to receive and is to be given free of charge one of the larger bars of candy, and the purchaser who procures one of the said candies having a yellow center is entitled to receive and is to be given free of charge, one of the small boxes of candy. The purchaser of the last piece of the aforesaid chocolate-covered marshmallow candy of uniform size and shape, is entitled to receive and is to be given free of charge the larger box of candy in said assortment. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of the said pieces of candy, and the purchaser of the last piece of candy in said assortment, are thus to procure one of the larger bars of candy or one of the small boxes of candy, or the larger box of candy, wholly by lot or chance.

Respondent furnishes and has furnished with said assortment of candy, a display card to be used by the retailer in offering said candy for sale to the public, which display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent consists of a number of small chocolate-covered marsh-

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mallow candies, a number of larger bars of candy, a number of small boxes of candy, and a larger box of candy, together with a device commonly called a push card. The candy in said assortment is to be distributed in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a number is disclosed. Sales are 1¢ each, and the card bears statements or legends informing the prospective customer as to which numbers receive one of the small chocolate-covered pieces of candy, which numbers receive one of the larger bars of candy, and which numbers receive one of the small boxes of candy. The last push on the card receives the larger box of candy. The numbers on the card are effectively concealed from the purchasers or prospective purchasers until a push or sale has been made and the particular push separated from the board. The fact as to whether a purchaser obtains one of the small chocolate-covered marshmallow pieces of candy, one of the larger bars of candy, one of the small boxes of candy or the larger box of candy is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy 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 sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy 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 larger pieces or boxes of candy in the manner alleged. Such sales of candy, along with the sale of such chances to procure larger pieces or boxes of candy in the manner alleged, are contrary to the established public policy of the several States of the United States 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, and corporations, who make and sell candy in competition with the respondent as above alleged, are unwilling to offer for sale or sell candy so packed and assembled 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 or boxes of candy by chance, and such competitors refrain therefrom.

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PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. Many dealers in candy are induced to purchase said candy so offered for sale and sold by respondent, in preference to all others, because said ultimate purchasers give preference to respondent's said candy on account of the said game of chance involved therein. The use of said methods by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods, to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods; 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 equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by the 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 methods or equivalent methods that are contrary to public policy and to criminal statutes, as above alleged.

PAR. 6. 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 methods are contrary to the 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 methods are detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of said reasons.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, MODIFIED 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 November 9, 1935, issued and served a complaint upon the respondent, Cosner Candy Company, a corporation, charging that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

After the issuance of said complaint, the respondent having failed to file answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The respondent was represented by Walter J. Hughes, Esq., but offered no testimony or other evidence in opposition to the charges of complaint. Thereafter the proceeding came regularly on for final hearing before the Commission on said complaint, the testimony and other evidence and brief in support of the complaint, respondent having failed to file any brief, and through its counsel having indicated that it did not desire to orally argue the matter, and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Cosner Candy Company, is a corporation organized under the laws of the State of Colorado, with its principal office and place of business in the city of Denver, Colo. Respondent is now and for several years last past has been engaged in the manufacture of candy in Denver, Colo., and in the sale and distribution of said candy to retail and wholesale dealers located in the State of Colorado and in the States of Wyoming, Nebraska, and New Mexico. It causes said candy when sold to be shipped or transported from its principal place of business in Denver, Colo., to purchasers thereof in Colorado and in Wyoming, Nebraska, and New Mexico. In so carrying on said business respondent is, and has been, engaged in interstate commerce and is, and has been, in active com-

petition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent is an assortment designated as "Lucky Cherries" composed of a number of small chocolate covered pieces of candy of uniform size and shape, together with a number of larger pieces or bars of candy, a number of small boxes of candy, and a larger box of candy. The larger bars of candy, the small boxes of candy, and the larger box of candy are given as prizes to the ultimate purchasers or consumers of said chocolate covered candies in the following manner:

The majority of the said chocolate covered candies in said assortment have white centers, but a small number of said chocolate covered candies have pink centers and a still smaller number of said chocolate covered candies have yellow centers. The color of the center of the said chocolate covered candies is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The said chocolate covered candies retail at the price of 1¢ each, but the purchaser or consumer who procures one of said candies having a pink center is entitled to receive, and is given free of charge, one of the larger bars of candy, and the purchaser or consumer who procures one of the said candies having a yellow center is entitled to receive, and is given free of charge, one of the small boxes of candy. The purchaser of the last piece of the said chocolate covered candies is entitled to receive, and is given free of charge, the larger box of candy in said assortment. The larger pieces or bars of candy, the small boxes of candy, and the larger box of candy contained in said assortment are thus distributed to purchasers of the small chocolate covered candies wholly by lot or chance.

Respondent furnishes and has furnished with said assortment of candy a display card designed to be used by the retailer in offering said candy for sale to the public, which display card bears a legend or statement informing the prospective customer that the said candy is being sold in accordance with the above-described plan.

PAR. 3. Another assortment manufactured and distributed by respondent, and also designated as "Lucky Cherries" consists of exactly the same type and quantity of candy as the assortment described in paragraph 2 just above, but also includes a device commonly called a push card. The push card included with this assortment bears legends at the top thereof stating the manner in which the candy is to be

distributed to the purchasers or consumers. These legends are as follows:

"LUCKY CHERRIES"

1¢ PER PUNCH	—NO BLANKS—	1¢ PER PUNCH
Nos. 5-15-25-35-45-55-65-75-85-95-105-115-125		
135-145-155-165-175-185 and 195 Receives		
5¢ "CHOCOLATE CANDY BAR"		
Nos. 7-17-107-117 Receives 5¢ "CHOCOLATE CANDY BAR"		
Nos. 13 and 113 Receives 4 oz. Pkg. "DAYLIGHT CHOCOLATES"		
LAST NUMBER Punched out Receives "LARGE BOX DAYLIGHT CHOCOLATES"		

The push card also has immediately below the legends quoted 200 partially perforated discs, and under each disc is a number effectively concealed from purchasers, and prospective purchasers, until a "push" or selection has been made and the particular disc separated from the card. The candy bars, the small packages of candy, and the large box of candy are distributed to purchasers in accordance with the legends shown at the top of said push card. Purchasers obtaining numbers not shown at the top of said push card receive one of the small pieces of candy contained in said assortment. Sales are 1¢ each and the fact as to whether a purchaser receives one of the small pieces of chocolate covered candy, one of the larger pieces or bars of candy, one of the small packages of candy, or the larger package or box of candy for the price of 1¢ is thus determined wholly by lot or chance.

PAR. 4. The respondent at certain times and seasons of the year distributed various other assortments similar to the assortments described in paragraphs 2 and 3 and involving the same principle or sales plan for the sale and distribution of the said candy to the ultimate purchaser or consumer, but varying only in detail. As an illustration of such seasonal variation the respondent, at or before the Easter season of the year, distributed assortments involving the same principle or sales plan in which the candy was egg shape, the majority being small candy eggs and a few of the pieces being large candy eggs.

PAR. 5. The candy assortments involving the lot or chance feature as described in paragraphs 2, 3, and 4 above, are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These

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terms will be used hereafter in these findings to designate these types of assortments.

PAR. 6. 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 methods are contrary to the 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 methods are detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of said reasons.

PAR. 7. The respondent sells its merchandise to retail dealers and to wholesale dealers and jobbers in the States of Colorado, Nebraska, Wyoming, and New Mexico, and respondent's merchandise, both "straight" and "break and take" or "draw" or "deal" assortments, is resold in practically all stores where candy is sold.

All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the retail dealers or to the wholesale dealers and jobbers. The assortments are packed and assembled in such manner that they are sold and may be sold by the retail dealers to the purchasing public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy by retail dealers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to retail dealers and to wholesale dealers and jobbers for resale to retail dealers of assortments of candy assembled and packed as described in paragraphs 2, 3, and 4 herein, respondent has knowledge that the 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, without alteration, addition, or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 8. Many competitors of respondent regard such methods of sale and distribution as morally bad and as 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. 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" candy show a continued decrease.

There is a 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 resold 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 respondent's 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 principal demand in the trade for the "break and take," or "deal," or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take," or "draw," or "deal" assortments and the possibility of becoming a winner it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," or "draw," or "deal" 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. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight" candy in interstate commerce in competition with the "break and take," or "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature indicated with the "break and take," or "draw," or "deal" candy.

PAR. 11. The exact annual volume of respondent's business was not shown but an officer of the respondent corporation testified, and the Commission finds, that the annual volume of respondent's business

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exceeds \$200,000, and that the sale of the "break and take," "draw," or "deal" assortments is a substantial part of this volume.

PAR. 12. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Cosner Candy Company, a corporation, 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 violation of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, no answer having been filed to the complaint, and no testimony having been offered in opposition thereto, and upon the brief herein filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution by it in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, retail dealers and wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the

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contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or candy products contained in said assortments 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 and shape having centers of a different color, together with larger pieces of candy or small boxes of candy, which said larger pieces of candy or small boxes of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

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

(5) Furnishing to retail dealers or to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy, or small box of candy, will be given free to said purchaser;

(6) Supplying to, or placing in the hands of retail and wholesale dealers and jobbers, assortments of candy, together with a device commonly called a "push card" for use, or which may be used, in distribution of said candy to the public at retail.

And it is further ordered, That the respondent, Cosner 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.

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IN THE MATTER OF
 THE L. D. CAULK COMPANY

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

Docket 2750. Complaint, Mar. 21, 1936—Decision, Nov. 13, 1936

Where a corporation engaged in manufacture and sale of dental materials and dental specialties, including a dental amalgam alloy sold to dentists for dental filling, and to dental supply houses for resale—

Falsely represented in its advertisements in trade papers and periodicals circulating among the dental profession and dealers in dental supplies in various States, and in circulars, etc., distributed in packages in which its said product was sold, as aforesaid, that its said alloy markedly resisted the effects of over and under manipulation and was adapted to any technic followed in the preparation of dental amalgam therefrom;

With effect of deceiving and misleading public, purchasers of dental amalgam alloy, into belief that such statements and representations were true, and into buying its said alloy instead of that sold by its competitors, and of diverting trade in such product to it; to the substantial injury and prejudice of its competitors:

Held, That such practices, under the conditions and 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.

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 L. D. Caulk 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, The L. D. Caulk Company, is a corporation, organized on or about April 30, 1913, and existing under the laws of the State of Delaware, and having at all times since its organization its principal place of business at Milford, Del., and branch offices, places of business, or retail depots in several cities in other States.

PAR. 2. During all the times above mentioned, the respondent is and has been engaged in the business of the manufacture and sale

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of dental materials and dental specialites and it has sold the same, including a dental amalgam alloy, which it sells under the brand or trade name, The Twentieth Century Alloy Improved (Caulk), to purchasers, located in the District of Columbia and in various States of the United States other than Delaware or the State of origin of the shipment, including dentists, who use and have used the respondent's amalgam alloys as dental filling for teeth of members of the public, and dental supply houses who purchase it for resale to dentists for such use.

PAR. 3. The respondent during all the times above mentioned and referred to, has caused and still causes its dental amalgam alloy, when so sold by it, to be transported, in containers packed in cartons with labels printed on or attached thereto bearing the above brand or trade name and various representations concerning the product, from Delaware, or the State of origin of the shipment to, into, and through other States and the District of Columbia to the purchasers located in said other States.

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 sale of dental amalgam alloys. They have sold their dental alloys under their respective brand names for the same purposes of use mentioned in paragraph 2 hereof, in containers packed in cartons with labels printed on or attached thereto, bearing their respective brand names, to dentists and to dental supply houses located in the District of Columbia and in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for use by the dentists or for resale by the dental supply houses to dentists for the use above referred to.

The sellers have caused their dental amalgam alloys, 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 the District of Columbia and States other than the State of the seller or the State of origin of the shipment to the purchasers located in said other States.

PAR. 5. During all the times above mentioned and referred to the respondent is and has been in substantial competition in interstate commerce, in the sale of its dental amalgam alloys, with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof.

PAR. 6. During the times above mentioned the respondent has caused advertisements of its dental amalgam alloy to be published in trade papers and periodicals circulating among the members of the dental

profession and dealers in dental supplies in the various States of the United States and has caused advertisements to be printed in circulars, etc., and distributed in the packages in which its dental amalgam alloy has been sold by it to dentists and to the trade. In its advertisements it has caused statements to be made, among others similar, that its Twentieth Century Alloy has a crushing strength of 58,000 pounds per square inch; that some batches of it exceed 60,000 pounds per square inch; that no other amalgam approaches so high a crushing strength average—that none other assures such durability; that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic; that it has a slight flow of 1.5% to 2%; and, in this connection, the respondent represented therewith that the American Dental Association limit for flow is 5%.

PAR. 7. The crushing strength of respondent's Twentieth Century Alloy, when used following the technic prescribed by respondent in connection with its use, varies from 41,500 pounds to 43,100 pounds, or is of an average of 42,300 pounds per square inch, and the statements in its advertisements above referred to that its said alloy has a crushing strength of 58,000 to 60,000 pounds per square inch were untrue.

The crushing strength of several of the alloys, sold by competitors of respondent, including the alloys of some of the competitors referred to in paragraph 4 hereof, when subjected to the manipulation usual to their use, following the directions of the respective competitors, or an average dental technic, varies from 46,000 pounds to 48,000 pounds per square inch, and the statements made by respondent in its advertisements that no other amalgam approaches so high a crushing strength average as respondent's Twentieth Century Alloy and that none other assures such durability were untrue.

Respondent's Twentieth Century Alloy and any other alloy, including alloys of the competitors of respondent, when subjected to the technic of a user of amalgam alloys, whose technic departs substantially from that prescribed by the manufacturer of the alloy, does not markedly resist the effects of over or under manipulation with the result that, for example, the alloy will be caused to show contraction whereas it is essential that such alloys show no contraction, and the statements in respondent's advertisements that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic were untrue.

The flow of respondent's Twentieth Century Alloy when used, following average dental technic is from 3.5% to 4%, and the statements in respondent's advertisements that its Twentieth Century Alloy has a slight flow of 1.5% to 2% were untrue.

PAR. 8. The statements and representations above referred to in paragraph 6 hereof, made by the respondent in its advertisements, were untrue and they each and all had the capacity and tendency to deceive and mislead dentists and dealers in dental supplies and, in consequence thereof, dentists and dealers in dental supplies, purchasers of respondent's Twentieth Century Alloy who bought the same for use in the filling of teeth of members of the public or for resale to dentists for such use were deceived and misled thereby; into the belief that in purchasing respondent's alloy they were purchasing an alloy which was as represented by the respondent by the statements and representations in its aforesaid advertisements; into the belief that in so purchasing it they were purchasing an alloy having crushing strength as represented by the respondent; into the belief that no other amalgam alloy had as high a crushing strength or assured such durability as the respondent's; into the belief that the respondent's alloy resisted and was proof against objectionable effects of over and under manipulation when subjected to any technic which might reasonably be expected to be employed by dentists in the use thereof; and, into the belief that it had the property of a slight flow of 1.5% to 2%, and was even better in that respect than alloys of competitors which had the flow recognized by the American Dental Association as satisfactory for dental amalgam alloy. And trade in amalgam alloys was thereby diverted from competitors to respondent.

PAR. 9. The respondent in its advertisements represented its Twentieth Century Alloy to be "The World's Best Alloy" and, in connection with the false statements and representations of the respondent, mentioned and referred to in paragraph 6 hereof, such as that no other amalgam approaches so high a crushing strength average and that none other assures such durability thereby; directly as well as indirectly and by inference falsely represented that the alloys sold by respondent's competitors had a lesser crushing strength and lesser durability; were not adaptable to the variable technic of dentists in using such alloys; that the use of alloys of competitors by dentists would be likely to develop results such as contraction of the amalgam with its consequent injurious effects; also, that the alloys of competitors did not have as slight a flow as the respondent's; and, these statements and representations of the respondent falsely disparage the alloys of its competitors. Thus, also, trade in dental amalgam alloys was thereby diverted from respondent's competitors to the respondent.

PAR. 10. The above acts and things done and caused to be done by the respondent were, and are, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on March 21, 1936, issued its complaint in this proceeding and caused it to be served upon the respondent, The L. D. Caulk Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent filed its answer to the complaint herein, and thereafter, a stipulation as to the facts, in lieu of testimony and evidence in support of or in opposition to the allegations of the complaint, was entered into by and between the respondent and counsel for the Commission, subject to the approval of the Commission, and it was further stipulated and agreed that the Commission may proceed upon said stipulation as to the facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and to enter its order disposing of the proceeding without further notice.

Thereafter, the Commission duly approved and filed the said stipulation as to the facts, and this proceeding regularly came on for final hearing by the Commission on the complaint, the answer, and the said stipulation as to the facts; and, the Commission having duly considered the same and being now 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, the L. D. Caulk Company, is a corporation, organized on or about April 30, 1913, and existing under the laws of the State of Delaware, and having at all times since its organization its principal place of business at Milford, Del., and branch offices, places of business, or retail depots in several cities in other States.

PAR. 2. During the times above mentioned, the respondent is and has been engaged in the business of the manufacture and sale of dental materials and dental specialties and it has sold the same, in-

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cluding a dental amalgam alloy, which it sells under the brand or trade name, The Twentieth Century Alloy Improved (Caulk), to purchasers, located in the District of Columbia and in various States of the United States other than Delaware or the State of origin of the shipment, including dentists, who use and have used the respondent's amalgam alloy as dental filling for teeth of members of the public, and dental supply houses who purchase it for resale to dentists for such use.

PAR. 3. The respondent during all the times above mentioned and referred to, has caused and still causes its dental amalgam alloy, when so sold by it, to be transported, in containers packed in cartons with labels printed on or attached thereto bearing the above brand or trade name and various representations concerning the product, from Delaware, or the State of origin of the shipment to, into, and through other States and the District of Columbia to the purchasers located in said other States.

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 sale of dental amalgam alloys. They have sold their dental alloys under their respective brand names for the same purposes of use mentioned in paragraph 2 hereof, in containers packed in cartons with labels printed on or attached thereto, bearing their respective brand names, to dentists and to dental supply houses located in the District of Columbia and in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for use by the dentists or for resale by the dental supply houses to dentists for the use above referred to.

The sellers have caused their dental amalgam alloys, 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 the District of Columbia and States other than the State of the seller or the State of origin of the shipment to the purchasers located in said other States.

PAR. 5. During all the times above mentioned and referred to the respondent is and has been in substantial competition in interstate commerce, in the sale of its dental amalgam alloys, with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof.

PAR. 6. During the times above mentioned the respondent has caused advertisements of its dental amalgam alloy to be published in trade papers and periodicals circulating among the members of the

dental profession and dealers in dental supplies in the various States of the United States and has caused advertisements to be printed in circulars, etc., and distributed in the packages in which its dental amalgam alloy has been sold by it to dentists and to the trade. In its advertisements it has caused statements to be made, among others similar, that its Twentieth Century Alloy has a crushing strength of 58,000 pounds per square inch; that some batches of it exceed 60,000 pounds per square inch; that no other amalgam approaches so high a crushing strength average—that none other assures such durability; that its Twentieth Century Alloy markedly resists the effects of over and under manipulation and is adapted to any technic; that it has a slight flow of 1.5% to 2%; and, in this connection, the respondent stated therewith the limit for flow in the specifications of the American Dental Association. The limit for flow in the specifications of the Dental Association was formerly 5% and is now 4% as shown hereinafter.

PAR. 7. The National Bureau of Standards of the Department of Commerce has conducted a laboratory for dental research work since sometime prior to November 1925. As a result of the research conducted by the Bureau of Standards, specifications were adopted by the Federal Specifications Board for the use of the departments and independent establishments of the United States Government in the purchase of dental amalgam alloy, entitled Federal Specification U. S. G. M. 356, effective November 30, 1925, and mandatory in the purchase of that commodity by the United States Government.

Federal Specification No. 356 for dental amalgam alloy, among other things provided, under the title General Requirements, that amalgam shall possess certain features, or satisfactory working qualities, two of which were thorough amalgamation in 3 minutes and susceptibility to carving for at least 15 minutes after amalgamation.

Under the title Detail Requirements, Specification No. 356, provided as follows:

1. Chemical Composition.—The chemical composition shall be within the following limits:

Silver.....	64 to 70 percent
Tin.....	26 to 29 percent
Copper.....	3 to 6 percent
Zinc.....	0 to 2 percent

2. Ultimate compressive strength.—The average ultimate compressive strength values of three or more tests shall not fall below 2,500 kilograms per square centimeter (approximately 35,500 pounds per square inch).

3. Flow.—Specimens subjected to a constant pressure of 250 kilograms per square centimeter (approximately 3,550 pounds per square inch) shall not show more than 5 percent flow (i. e., more than 5 percent shortening in length of specimen, in a period of 24 hours.

4. **Setting changes.**—Twenty-four hours after amalgamation the length shall have increased between 1 and 10 microns per centimeter. If at any time during the test a contraction of more than 4 microns per centimeter is detected, the alloy shall be rejected.

Under the title, **Method of Sampling and Tests, Specification No. 356**, among other things provided as follows:

1. At least 1 ounce shall be taken at random from every 500 ounces or fraction thereof for test at time of delivery.

2. **Ultimate compressive strength.**—Specimens shall be cylinders 6 mm. in diameter and 12 mm. long. These shall be prepared by condensing the amalgam into a cavity of these dimensions in a rigid block, using a reasonable technic (approximately that given in the sheet of instructions accompanying the alloy).

The ends of the cylinders shall be surfaced at right angles to the axis. Strength tests shall be made 5 days after condensing and the actual time consumed in applying the load shall not be over 5 minutes nor under 2 minutes. Tests shall be made at temperatures between 20 and 25 degrees centigrade.

3. **Flow.**—Specimens shall be cylinders 4 mm. in diameter and 8 mm. long and shall be prepared in the same manner as those for crushing. Three hours after condensing, the specimen shall be subjected to a constant pressure of 250 kilograms per square centimeter (approximately 3,550 pounds per square inch). During this test, the specimen shall be maintained at a temperature between 20 and 25 degrees centigrade.

4. **Setting changes.**—Specimens shall be prepared by condensing into a cavity or matrix. These shall be removed as soon as condensation is completed, and shall begin 15 minutes after amalgamation. (Time spent in mulling and condensing to be included as a part of the 15 minutes.)

Under the title, **Packing, Specification No. 356**, provided that the alloy shall be packed in moisture resisting containers and in quantities of 1 or 5 ounces as may be specified, and that the instructions for manipulation must accompany each package.

Under the title, **Notes, Federal Specification No. 356**, provided:

1. The foregoing specification is for the so-called "silver" amalgams which are to be used for restorations in the mouth.

2. Instruments and methods suitable for measuring the physical properties of alloys are described in Bureau of Standards Technologic Paper No. 157 and in the Dental Cosmos, March, 1920, pp. 305-335. It is not desired to limit the tests to the types of apparatus mentioned therein; on the contrary, any approved device, the accuracy of which is proved equal to those named, may be used.

PAR. 8. The Federal Specification Board on March 31, 1931, adopted Federal Specification U-A-451, superseding Federal Specification No. 356, and mandatory on and after September 1, 1931, in the purchase of dental amalgam alloy by the United States Government. Specification U-A-451 included without change the General Requirements in Federal Specification No. 356, above set forth. The

Findings

Detail Requirements in Specification U-A-451 are the same as they were in Specification No. 356, except as to chemical composition, which in Specification U-A-451 now are as follows:

1. Chemical composition.—The chemical composition shall be within the following limits:

	<i>Percent</i>
Silver-----	65-70
Tin-----	26-29
Copper-----	3- 6
Zinc-----	0- 2

PAR. 9. The American Dental Association is a voluntary association of approximately 40,000 dentists, or about 70 per cent of the 58,000 practising dentists in the United States. The Association adopted specifications for dental amalgam alloy which were substantially the same as Federal Specification U. S. G. M. 356, and U-A-451 as to the General and Detail Requirements thereof above set forth. On January 1, 1934, the Association adopted a revised Specification for dental amalgam alloy, the General Requirements of which were the same as in its previous Specification but in which the Detail Requirements and Method of Sampling and Tests were changed to read as follows:

Detail Requirements:

1. Chemical composition shall be within the following limits:

- Silver, 65 per cent minimum.
- Copper, 6 per cent maximum.
- Zinc, 2 per cent maximum.
- Tin, 25 per cent minimum.

Gold and platinum will not be regarded as foreign materials.

2. Flow.—Specimens subjected to a constant pressure of 250 kg. per square centimeter (approximately 3,550 pounds per square inch) shall not show more than 4 per cent flow (i. e., more than 4 per cent shortening in length of specimen) in a period of twenty-four hours.

3. Setting changes.—Twenty-four hours after amalgamation the length shall have increased between 3 and 13 microns per centimeter.

Methods of Sampling and Tests:

The test specimens shall be made according to the published directions which shall accompany each package. These directions shall not require complicated equipment and shall be in harmony with recognized dental practice. The following details shall be included in these directions: ratio of alloy to mercury, type of mortar and pestle, whether the alloy and mercury shall be stirred or ground, mixing time, mixing speed (revolutions of pestle or number of times amalgam is spread out and rolled up in the hand), when and how the excess mercury shall be expressed and the method of packing. The following details relative to test methods shall be observed:

1. Flow.—Specimens shall be cylinders 4 mm. in diameter and 8 mm. long. These shall be prepared by condensing the amalgam into a cavity

of these dimensions in a rigid block using the technic given in the sheet of instructions accompanying the alloy.

The ends of the cylinders shall be surfaced plane at right angles to the axis. Tests shall be made at temperatures between 20° and 25° C. Three hours after condensing, the specimen shall be subjected to a constant pressure of 250 kg. per square centimeter (approximately 3,550 pounds per square inch).

2. Setting changes.—Specimens shall be prepared by condensing into a cavity or matrix. These shall be removed as soon as condensation is completed and shall not be subject to restraint during the test. Measurements shall begin fifteen minutes after amalgamation (time spent in mulling and condensing to be included as a part of the fifteen minutes).

PAR. 10. In the manufacture of dental amalgam alloy, including respondent's, the metals used, mentioned in the foregoing specifications, are melted together and cast into bars. These bars are then cut or filed into finely divided particles and the alloy, usually in the shape of filings, is then ready to be combined with mercury by the dentist to form an amalgam for making dental restorations. The amalgam is made by the dentist who mixes the alloy and the mercury in certain proportions, usually in the proportions indicated by the manufacturer in directions which accompany the packages of the alloy when sold.

The manufacturer of the alloy usually specifies the type and condition of the mortar and pestle to be used and furnishes directions for the proper mixing of the alloy and mercury and for packing or condensing the amalgam in printed instructions on the packages of the alloy or in circulars which accompany the alloy when sold for use. The directions for mixing the alloy and mercury include the time and rate of trituration; the number of revolutions of the pestle per minute (R. P. M.); and, the pressure applied to the pestle by the hand of the operator.

The respondent, in circulars which accompanied each package of its alloy when sold, has indicated the proportions of mercury to be used with its alloy and the directions for mixing the mercury with its alloy and for packing or condensing the amalgam.

PAR. 11. Variations from the proportions of mercury recommended by the manufacturer to be mixed with its alloy produce varying results in the physical properties of the amalgam produced.

Variations from the specified condition of the surface of the mortar and pestle and from any of the directions for mixing mercury with the alloy; the length of trituration time; rate of rotation of the pestle; in the pressure applied to the pestle by the hand of the operator; and, variations in the technic of the operator, in condensing or packing the amalgam into a cavity, or into a matrix used for forming specimens of the amalgam for making tests of its properties.

produce varying results in the properties of the resulting amalgam. For instance, following directions in the condensing of the amalgam, the greater part of the mercury mixed with the alloy to form the amalgam is expressed therefrom during the process of condensing, making the amalgam more dry and harder, according to the amount of the mercury that is expressed, and the last portion of the condensed amalgam is quite dry, as all the mercury is expressed from it as far as possible by the dentist or operator, using generally a chamois or an amalgam squeeze cloth as an aid for that purpose.

No dental alloy, including respondent's, resists the affects of over or under manipulation in producing dental amalgam and any amalgam subjected to over or under manipulation will be caused to show substantial changes in its properties, some of which changes will be undesirable.

PAR. 12. During the year 1935, at the instance of the Dental Division of the Bureau of Standards, a certain portion of dental alloy from a quantity of alloy produced in one and the same manufacturing operation was submitted to each of nineteen operators who were qualified and competent technicians to test dental alloys. Seven of these operators were connected, respectively, with seven universities equipped with dental laboratories and twelve of the operators were connected, respectively, with twelve manufacturers of dental alloy, all of whom maintain laboratories in connection with the manufacture of dental alloy for commercial sale. The operators were furnished with identical and very detailed directions for testing the alloy submitted to them and they were requested to report the results of three tests each of the amalgam produced with the alloy, among other things as to the flow of the amalgam. In the case of one of these operators, the results of three tests of amalgam produced showed, respectively, a flow of 4.7%; 4.9%; 6%, for an average of 5.2%. The results of three tests by another operator showed a flow of 4.7%; 5.2%; 4.5%; for an average result of 4.8% flow. These results were the highest of those reported by the nineteen operators. In the case of two other of the operators the results of three tests were: for one of the operators 1.3%; 1.8%; 1.6% of flow for an average flow of 1.6%. For the second operator the results were 1.9%; 2%; 1.9%, for an average flow of 1.9%.

At the time these tests of the flow of the amalgam produced from the alloy mentioned was made, both the Federal and the American Dental Association's specifications gave 4% as the maximum limit for flow of dental amalgam. While in the case of the tests made by two of the operators, the average result for the flow was slightly in excess of 4% of flow, the average results of the tests of all nineteen

operators was within the limit for flow in the specifications above mentioned. The difference between the results of the tests made by the nineteen operators is accounted for largely by the variation in the individual operations of the operators, although each was following the same detailed directions.

PAR. 13. The statements and representations made by the respondent in its advertisements, in connection with the sale of respondent's said alloy: that its said alloy ----- markedly resists the effects of over and under manipulation and is ----- adapted to any technic, were untrue statements and representations and they had the capacity and tendency to deceive and mislead the public, and they have deceived and misled the public, purchasers of dental amalgam alloy, into the belief that the said statements and representations were true, and, in reliance upon such belief, into purchasing respondent's alloy instead of dental amalgam alloy sold by the respondent's competitor.

PAR. 14. In consequence of the practices of the respondent in representing that its said dental amalgam alloy markedly resisted over and under manipulation and was adapted to any technic, trade in dental amalgam alloy was diverted to the respondent to the substantial injury and prejudice of its competitors.

CONCLUSION

The aforesaid practices of the respondent, The L. D. Caulk Company, in representing that its said alloy markedly resists the effects of over or under manipulation and that it is adapted to any technic in the preparation of dental amalgam therefrom, under the conditions and circumstances described in the foregoing findings, were to the prejudice and injury of the competitors of respondent and were to the prejudice and injury of the public and were unfair methods of competition 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 respondent, and the stipulation as to the facts, filed in lieu of testimony and evidence in support of or in opposition to the allegations of the complaint, oral argument and filing of briefs having been waived, and, the Commission having made its findings as to the facts and its conclusion that the respondent had violated the provisions of an Act of

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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, The L. D. Caulk Company, its officers, representatives, agents, and employees, in connection with the offering for sale, and the sale and distribution of its Twentieth Century Alloy in interstate commerce and in the District of Columbia, do forthwith cease and desist from representing: that its said alloy or any dental alloy substantially of the same composition sold or offered for sale by respondent under the said trade name, or any other trade name, markedly resists the effects of over or under manipulation and that it is adapted to any technic followed in the preparation of dental amalgam therefrom.

It is further ordered, That the respondent shall, within 30 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
CHARLES N. MILLER COMPANY

OPINION AND DECISION AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2826. Complaint, Mar. 29, 1936—Order, Nov. 14, 1936*¹

Dismissal of complaint, hereinbefore issued, requested on ground that respondent had discontinued unfair methods of competition therein charged, namely, use of a lottery scheme in sale of its candy, rejected, but prior order modified for reasons set forth in opinion and decision as respectively applicable.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Harold W. Knowlton and *Jacobs & Jacobs*, of Boston, Mass., for respondent.

OPINION

The complaint in this case charged the Charles N. Miller Company, a Massachusetts corporation, with principal office and place of business at Boston, in that State, with the violation of Section 5 of the Federal Trade Commission Act (38 Stat. 717, 719; 15 U. S. C. A. Sec. 45), in selling and distributing candy, in interstate commerce, by methods involving lotteries.

The respondent in due course filed answer, in which it stated that, before issuance of the complaint, it had ceased to sell its candy by the methods charged. Subsequently, it filed a second answer, admitting all the material allegations of the complaint, denying that at the time the complaint was issued or since that time it was using lottery methods in the sale of its products, and waiving all further proceedings.

Thereafter, the proceeding came on regularly for final hearing before the Commission on the complaint and answers, and the Commission, having duly considered the record and being fully advised in the premises, on August 4, 1936, made and entered its report in writing in which it stated its findings as to the facts and conclusion, and issued and served on respondent an order which directed the respondent, and its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to 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

¹ For text of complaint and findings, as heretofore issued, and not modified, see ante at page 211.

assembled that sales of such candy to the general public are to be made or *are designed* to 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 or *are designed* to be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape 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.

Respondent requested a dismissal of the complaint on the ground that it had discontinued the unfair methods of competition. Discontinuance or abandonment of such methods does not of itself constitute a ground for dismissal. Only the issuance of an order to cease and desist will act as a deterrent against resumption of the unfair acts. After an order has been issued, if there is a violation, there may be a proceeding for enforcement without the expense and delay incident to instituting another case. The Federal Trade Commission Act empowers the Commission to issue complaints involving unfair methods of competition that *have been* used, if it appears to the Commission that such proceedings would be in the public interest.

It will be noted that paragraphs 1 and 2 of the order, above quoted, contain the words "are designed to." The Commission feels that a strict interpretation of these words, when referring to a method of competition employed by a respondent, might be construed as referring to the intent of such respondent; and that it would be unwise to establish a precedent by issuing an order to cease and desist which might, under a certain construction, require proof of such intent. Accordingly, the order will be modified by changing the words "are designed to" to the word "may."

The respondent through its counsel, seems to be a bit exercised for fear that some candy jobber or dealer might purchase some of its "straight" merchandise and assemble the same in a lottery assortment, or offer the same for sale by means of some lottery scheme. The Commission feels that such fears are without foundation. The language of the order, as modified, clearly indicates that, unless the respondent so packs and assembles its merchandise in such a way that it is or may be

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used without alteration or rearrangement as a lottery, it would not be violating the order.

Order modified by substitution of the word "may" for the words "are designed to" in paragraphs 1 and 2.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent admitting the material allegations of the complaint to be true, and waiving all further proceedings herein, 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, Charles N. Miller Co., its officers, agents, representatives, and employees, in the offering for sale, 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 or may be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape 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.

It is further ordered, That the respondent, 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
MAJESTIC DISTILLING COMPANY, ET AL.

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

Docket 2376. Complaint, July 1, 1935¹—Decision, Nov. 17, 1936

Where two partners and their corporate successor, acting upon their direction, engaged in purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof to wholesalers and retailers, in substantial competition with those engaged in the manufacture by true distillation of whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof, and with those engaged in rectifying, blending, and bottling whiskies and other spirituous beverages, and never engaged in distillation of alcoholic beverages by original and continuous distillation from mash, wort, or wash, as long understood from word "distilling" in the trade as meaning manufacture of such liquors by process of distillation from some kind of mash, and with no stills or other apparatus for the production of distilled spirits—

Represented, through use of word "Distilling" in their corporate name, printed on their stationery and on the labels attached to the bottles in which they sold and shipped their said products, and furnished their wholesale customers with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, and other spirituous beverages contained in such bottles were by them made through process of distillation, notwithstanding fact they were not distillers and did not distill said whiskies or other liquors thus bottled, sold, and transported by them;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into belief that in buying said liquors they were purchasing a product bottled at a distillery by the original distiller thereof, as preferred by a substantial portion of purchasers, and with effect of unfairly diverting trade to them from their competitors, including those who manufacture spirituous liquors by process of original and continuous distillation from mash, wort, or wash, and truthfully designate themselves as "distilling" companies, and those who, engaged as rectifiers, do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

¹ Amended and supplemental.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas 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 24th day of April 1934, issued its complaint charging Morris Brown and Max M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company, with using certain unfair methods of competition in commerce, as "commerce" is defined in said act, and it since having appeared to the Commission that Majestic Distilling Company, a body corporate, with the aforesaid individuals as directors thereof, on, to wit, the 11th day of March 1935, became and was the successor to the business theretofore carried on by the aforesaid individuals, now therefore, pursuant to the provisions of the aforesaid act, the Commission having reason to believe that Majestic Distilling Company, a corporation, as well as Morris Brown and Max M. Berkowitz, individuals, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this, its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. From April 1934, until March 11, 1935, respondents, Morris Brown and Max M. Berkowitz, individuals operating as a partnership under the firm name and style Majestic Distilling Company, under the laws of the State of Maryland, and having their office and principal place of business in Baltimore, in said State, were engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. Respondent, Majestic Distilling Company, is a corporation organized in August 1934, existing and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State, and on the 11th day of March 1935, said corporation became and was the successor to the business theretofore carried on by the aforesaid individuals, and thereafter was and has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

The matters and things hereinafter alleged to have been done and performed, were done and performed by the individual respondents, Morris Brown and Max M. Berkowitz, operating as a partnership between the dates of April 1934, and the 11th day of March 1935; and the matters and things hereinafter alleged to have been done and performed, were done and performed by Majestic Distilling Company, a corporation, in its own right and upon the direction of Morris Brown and Max M. Berkowitz, on and after the 11th day of March 1935.

In the course and conduct of the business of Majestic Distilling Company, both as a partnership and as a body corporate, as hereinbefore set out, Morris Brown, Max M. Berkowitz and Majestic Distilling Company, a corporation, and each of them, now cause and have caused the aforesaid products when sold to be transported from their place of business in Baltimore aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and in the District of Columbia. In the course and conduct of the business as aforesaid, respondents, and each of them, are now and have been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of the business as aforesaid, respondents, and each of them, are and have been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilling" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is completed, and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of the business as aforesaid, by use of the word "distilling" in their partnership and corporate name, printed on their stationery and on the labels attached to the bottles in

which they sell and ship their said products, and in various other ways, respondents, and each of them, represent and have represented to their customers and furnished the latter with the means of representing to their vendees, both retailers and the ultimate consuming public, that they, respondents, are distillers and that the said whiskies, brandies, rums, and other spirituous beverages therein contained were by them manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, the respondents are not and have not been distillers, do not now and never did distill the said whiskies, or other spirituous liquors by them so bottled, labeled, sold, and transported, and do not now and never did own, operate, or control a place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous liquors, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rums, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages who do not use the words "distilleries," "distillery," "distilling," or "distillers" as a part of their corporate or trade names nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondents as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondents are distillers and that the whiskies, brandies, rums, and other spirituous beverages sold by the respondents are manufactured and distilled by them and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, brandies, rums, and other spirituous beverages rectified, blended and bottled by the respondents, thereby diverting trade to respondents from their competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation of whiskies, brandies, rums, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 April 24, 1935, issued and served its complaint in this proceeding upon Morris Brown and Max M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, it appearing that Majestic Distilling Company, a body corporate, with the aforesaid individuals as directors thereof, on, to wit, the 11th day of March 1935, became and was the successor to the business theretofore carried on by the aforesaid individuals, the Federal Trade Commission, on July 1, 1935, issued and served its amended and supplemental complaint in this proceeding upon the respondents, Majestic Distilling Company, a corporation, and Morris Brown and M. M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company. After the issuance of said amended and supplemental complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Morris Brown and Max M. Berkowitz, are individuals who, from January 4, 1934, up to approximately March 11, 1934, traded under the name and style of Majestic Distilling Company, with place of business at No. 10 E. Lombard Street, Baltimore, Md. During said time they were engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

Respondent, Majestic Distilling Company, is a corporation organized in August 1934, existing and doing business under the laws of the State of Maryland, with its office and principal place of business at No. 10 E. Lombard Street, Baltimore, Md. On March 11, 1935, said corporation became and was the successor to the business as above described which had theretofore been carried on by the aforesaid individuals Morris Brown and Max M. Berkowitz and thereafter was, has been, and still is, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

The matters and things hereinafter alleged to have been done and performed, were done and performed by the individual respondents, Morris Brown and Max M. Berkowitz, operating as a partnership between the dates of April 1934, and the 11th day of March 1935; and the matters and things hereinafter alleged to have been done and performed, were done and performed by Majestic Distilling Company, a corporation, in its own right and upon the direction of Morris Brown and Max M. Berkowitz, on and after the 11th day of March 1935.

In the course and conduct of the business of Majestic Distilling Company, both as a partnership and as a body corporate, as hereinbefore set out, Morris Brown, Max M. Berkowitz, and Majestic Distilling Company, a corporation and each of them, now cause and have caused the aforesaid products, when sold to be transported from their place of business in Baltimore aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and in the District of Columbia. In the course and conduct of the business as aforesaid, respondents, and each of them, are now and have been in substantial competition with other corpora-

tions, individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of the business as aforesaid, respondents, and each of them, are, and have been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Since the repeal of prohibition, there has been, and still is, a sharp distinction in the trade between the processes of distilling and rectifying. Distilling is confined to the manufacture of alcoholic spirits by an original and continuous process from grain, or other raw materials, in a mash to a cistern room, in the case of whiskey. Rectifying deals wholly with subsequent modifications of the product not involving the process of distillation. This distinction in trade significance has been recognized by the Government through its issuance of two separate kinds of basic permits to those engaging in the two respective operations.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation, and sometimes with spirits purchased from other distillers, or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises, wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery rectifying plant or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the -----"

Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ----- Company." If, in the distiller's rectifying plant other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company." Finally, blown (usually in the bottom) in each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery, and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-397" designates these respondents. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

Knowledge of these details is not widespread among the retail trade, and is very limited to the general public.

It is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone, on the label, whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

These respondents purchase their distilled spirits from distillers both within and outside of Maryland, do little rectifying, and mostly bottle the purchased whiskies straight at 100 proof.

None of these respondents had, nor ever has, distilled alcoholic beverages by an original and continuous distillation from mash, wort, or wash, and does not now, and has never had stills or other apparatus for the production of distilled spirits. For a long period of time, the word "distilling" in connection with the liquor industry has had, and still has, a definite significance to the minds of purchasers, both wholesale and retail, to wit: the manufacture of such liquors by the process of distillation from some kind of mash.

PAR. 3. Approximately thirty witnesses who had had no connection with the liquor industry were subpoenaed at the instance of the Commission to ascertain whether or not there existed a preference of a substantial portion of purchasers and potential purchasers to buy whiskies and other alcoholic beverages, bottled at, or by, a distillery or distilling company. These witnesses were fairly representative, and included men from practically every walk of life, namely: a banker, stockroom clerk, sales manager, superintendent of fertilizer plant, salesman, Government employee, pastry shop owner, electrical engineer, telephone man, real estate broker, postal clerk, department store manager, paper carrier, insurance man, a professor of anatomy,

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a syrup salesman, an assistant train yardmaster, coal merchant, and a graduate law student. Their testimony showed that the word "distilling," or similar words in connection with the liquor industry, meant to them a person or concern which manufactured by distillation, and twenty-two of them testified that in a corporate name such as respondents', such a word as "distilling" would imply to them that respondents were such a manufacturer, and they indicated a distinct preference to buy distillery-bottled packages of liquor, usually for the reason that they felt more confidence in the goods, as the manufacturer, in their judgment, was likely to be more trustworthy and have more at stake than any middle-man. A liquor dealer with thirty-one years of experience in making contacts with the trade and the public was of the opinion, based upon such experience, that in the majority of cases, the ultimate consumer prefers to buy distillery-bottled goods. The respondents produced approximately ten witnesses who were retail liquor dealers, and who, from their experience with the public, stated it as their observation that customers paid no attention to the corporate or trade name of the seller as shown upon the labels, but made their purchases because of other considerations. Such testimony is not contradictory to that given by the thirty witnesses as aforesaid, from all of which the Commission concludes it to be true that there is a substantial portion of purchasers which prefers to buy beverages bottled by the original distiller or manufacturer thereof.

PAR. 4. In the course and conduct of their business as aforesaid, by the use of the word "Distilling" in their corporate name, printed on their stationery, and on the labels attached to the bottles in which they sell and ship such products, respondents represent, and furnish their wholesale customers in the District of Columbia with the means of representing to the retailer and ultimate purchaser that the said whiskies, brandies, rums, and other spirituous beverages therein contained, were by them manufactured through the process of distillation, when, as a matter of fact, the respondents are not distillers and did not distill the said whiskies, brandies, rums, or other spirituous liquors by them so bottled, sold, and transported.

PAR. 5. The Commission finds that because the trade, as well as the public, has a substantial preference to buy liquors bottled by the actual distillers, the tendency to diversion of trade by respondents' use of the word "Distilling" in their name is plain, particularly with reference to any prospective purchaser who does not know from other sources the particular status of respondents, and the name readily lends itself as a tool to any salesman to be used by him for the pur-

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pose of gaining an unfair competitive advantage in competing with an actual distilling company for any particular order of whiskey.

The use by respondents of the term "Distilling" in their trade or corporate name upon their invoices, stationery, advertising, and upon the labels attached to the bottles in which they sell and ship their spirituous liquors, has a tendency to mislead and deceive wholesalers, retailers, and the ultimate purchasers into the belief that in purchasing the same they are purchasing a product bottled at a distillery by the original distiller thereof, and this, in turn, tends to, and does, unfairly divert trade from respondents' competitors to the respondents. Among such competitors, there are those who, manufacturing spirituous liquors by a process of original and continuous distillation from mash, wort or wash, do truthfully designate themselves as distilling companies, and also among such competitors are those in the same class with these respondents, to wit: those engaged in that branch of the industry known as the distilled spirits rectifying industry who, as rectifiers do not untruthfully designate themselves as "distilleries," "distillers," or "distilling companies."

CONCLUSION

The aforesaid acts and practices of the respondents, Majestic Distilling Company, a corporation, and Morris Brown and Max M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company, are 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 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, Majestic Distilling Company, a corporation, and Morris Brown and Max M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company, testimony and other evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission, and by Horace J. Donnelly, Jr., counsel for respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of

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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 respondents, Majestic Distilling Company, a corporation, its officers, representatives, agents, and employees, and Morris Brown and Max M. Berkowitz, individuals, trading under the name and style of Majestic Distilling Company, and each of them, in connection with the offering for sale, sale, and distribution of whiskies, brandies, rums, and other spirituous beverages in interstate commerce or in the District of Columbia do forthwith cease and desist from:

Representing through the use of the word "Distilling" in their respective corporate or trade names on their stationery, advertising, on the labels attached to the bottles in which they sell and ship their products, or in any other way by word or words of like import, (a) that they are distillers of whiskies, brandies, rums, or any other spirituous beverages; (b) that the said whiskies, brandies, rums, or other spirituous beverages were by them, or any of them, manufactured through the process of distillation; or (c) that they own, operate, or control a place, or places, where any such products are by them manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondents shall actually own, operate, or control such a place or places.

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

IN THE MATTER OF

C. O. TAYLOR DISTRIBUTING COMPANY

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

Docket 2803. Complaint, May 15, 1936—Decision, Nov. 17, 1936

Where a corporation engaged as wholesale distributor of alcoholic liquors, purchasing bottled whiskies and other distilled spirits and selling the same in substantial competition with those engaged in the manufacture by distillation of whiskies and other distilled spirits or in purchasing and bottling such products and selling the same, thus manufactured or purchased, among the various States and in the District of Columbia, and including among its said competitors those who (1) manufacture the whiskies and other distilled spirits sold by them by process of original distillation from mash, wort, or wash, and truthfully use words "Distillery," "Distilleries," "Distillers," "Distilling," or "Distilled Products," as a part of their corporate or trade names or on their stationery, cartons, and labels of the bottles in which they sell and ship such products; those who, (2) engaged in purchasing, rectifying, blending, and bottling such products, do not use aforesaid words as above set forth; and those who, (3) engaged in the sale of said products, do not misrepresent the kind, quality or proof of the whiskies sold by them or the manner or method by which their products are bottled; and not engaged in "distilling" said whiskies and other spirits sold and transported by it, as long definitely understood in trade and by ultimate purchasing public as meaning manufacture of whiskies and other distilled spirits by process of original distillation from mash, wort, or wash, and not a distiller of the aforesaid products, for purchase of which, direct from the actual distiller, there is a preference on the part of a substantial portion of the purchasing public, and neither owning, operating, nor controlling any place or places where such spirits are made by process of distillation as hereinabove explained—

- (a) Represented, through abbreviation of word "Distributing" to "DIST." in its corporate name and by the printing thereof on stationery, cartons, labels, contracts, and advertising matter used by it, and in various other ways, to its customers, and furnished the same with the means of thus representing to their vendees, both retailers and ultimate consuming public, that it was a distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through process of distillation from mash, wort, or wash as aforesaid, notwithstanding the fact it was not a distiller and did not thus distill its said products as hereinbefore set out;
- (b) Labeled its said whiskey as "A 100 Percent Straight Bourbon Whiskey 90 Proof," notwithstanding fact that said product was not, as implied to trade and purchasing public from term "100 percent straight whiskey," 100 proof, and was not 100 percent straight whiskey; and
- (c) Set forth on the labels attached to the bottles of whiskies sold and distributed by it that it carefully supervised the bottling thereof, notwithstanding fact it did not thus supervise same and had nothing to do with either its blending or bottling;

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With effect of misleading and deceiving dealers and purchasing public into belief that the whiskies and other distilled spirits sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to mislead them into erroneous belief that aforesaid whiskey was 100 percent straight whiskey and not less than 100 proof, and that its whiskey had been bottled under its direct supervision, and with effect of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other distilled spirits and thereby divert trade to it from its competitors who do not make the same or similar misrepresentations; to the substantial injury of competition in commerce:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse 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 C. O. Taylor Distributing 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, C. O. Taylor Distributing Company, is a corporation organized, created, and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 444 West Grand Avenue, in the city of Chicago, in said State. It is now, and has been for more than one year last past, engaged in the business of a wholesale distributor of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits, and selling the same in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent being engaged in business, as aforesaid, causes its said products, when sold by it, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. In the course and conduct of its business, as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manu-

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facture, by distillation, of whiskies and other distilled spirits, or in the business of purchasing and bottling whiskies and other distilled spirits, and in the sale of said products so manufactured or purchased in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a long period of time the word "distilling," when used in connection with the liquor industry, has had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, by an abbreviation of the word "Distributing" to "DIST." in its corporate name and as printed on stationery, cartons, labels, contracts, and advertising matter used by it in soliciting and obtaining the sale of its products, as aforesaid, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid. As a matter of fact, respondent is not a distiller, does not distill the said whiskies or other distilled spirits by it so sold and transported, and does not own, operate, or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. In the course and conduct of its business, as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent further labels its whiskey as follows:

C. O. TAYLOR
A 100 Percent
Straight Bourbon Whiskey
90 Proof

The above statement appearing on the labels of its bottles of whiskey purports to be descriptive of respondent's whiskey and in and by the use of said labels respondent represents that its whiskey so labeled and represented is 100 percent straight whiskey. The term "100 percent straight whiskey" means to the trade and to the purchasing public whiskey that is not less than 100 proof. In truth and in fact, the whiskey labeled, sold, and distributed, as aforesaid, is not 100 proof and is not 100 percent straight whiskey.

PAR. 6. In the course and conduct of its business, respondent represents by labels attached to the bottles of whiskey which it sells and distributes, as aforesaid, that it carefully supervises the bottling of its product; when, in truth and in fact, respondent has nothing to do with the blending or bottling of said product and does not in any manner supervise the bottling of said product.

PAR. 7. There are among the competitors of respondent engaged in the sale of whiskey and distilled spirits, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, the whiskies and other distilled spirits sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons, and labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of the corporate or trade names, nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the sale of similar whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products, do not misrepresent the kind, quality, or proof of the whiskies sold by them and who do not misrepresent the manner or method by which their products are bottled.

PAR. 8. The representations of respondent, as hereinabove set forth, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and have the capacity and tendency to mislead and deceive dealers and the purchasing public into the erroneous belief that the whiskey sold by it is 100 percent straight whiskey and not less than 100 proof and that the whiskey sold and distributed by it has been bottled under the direct supervision of respondent itself; and such representations have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by respondent, thereby diverting trade to respondent from its competitors who do not make the same or similar misrepre-

sentations, and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 9. The acts and practices of respondent are 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 15, 1936, issued, and on May 18, 1936, served its complaint in this proceeding upon respondent, C. O. Taylor Distributing Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed answer thereto, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same, and being now 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, C. O. Taylor Distributing 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 located at 444 West Grand Avenue, in the city of Chicago, in said State. It is now, and has been for more than one year last past, engaged in the business of a wholesale distributor of alcoholic liquors, purchasing bottled whiskies and other distilled spirits, and selling the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent being engaged in business, as aforesaid, causes its said products, when sold by it, to be transported from its place of business in the State of Illinois to purchasers thereof located in

the various States of the United States other than the State of Illinois and in the District of Columbia. In the course and conduct of its business, as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, by distillation, of whiskies and other distilled spirits, or in the business of purchasing and bottling whiskies and other distilled spirits, and in the sale of said products so manufactured or purchased in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a long period of time the word "distilling," when used in connection with the liquor industry, has had, and still has, a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturing of whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, by an abbreviation of the word "Distributing" to "DIST." in its corporate name and as printed on stationery, cartons, labels, contracts, and advertising matter used by it in soliciting and obtaining the sale of its products, as aforesaid, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distilling company and that the whiskies and other distilled spirits by it sold were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid. As a matter of fact, respondent is not a distiller, does not distill the said whiskies or other distilled spirits by it so sold and transported, and does not own, operate or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 5. In the course and conduct of its business, as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent further labels its whiskey as follows:

C. O. TAYLOR
A 100 Percent
Straight Bourbon Whiskey
90 Proof

The above statement appearing on the labels of its bottles of whiskey purports to be descriptive of respondent's whiskey, and in, and by, the use of said labels respondent represents that its whiskey so labeled and represented is 100 percent straight whiskey. The term "100 percent straight whiskey" means to the trade and to the purchasing public whiskey that is not less than 100 proof. In truth and in fact, the whiskey labeled, sold, and distributed, as aforesaid, is not 100 proof and is not 100 percent straight whiskey.

PAR. 6. In the course and conduct of its business, respondent represents by labels attached to the bottles of whiskey which it sells and distributes, as aforesaid, that it carefully supervises the bottling of its product; when, in truth and in fact, respondent has nothing to do with the blending or bottling of said product and does not in any manner supervise the bottling of said product.

PAR. 7. There are among the competitors of respondent engaged in the sale of whiskey and distilled spirits, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, the whiskies and other distilled spirits sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade name and on their stationery, cartons, and labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of the corporate or trade names, nor on the stationery, cartons, and labels of the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the sale of similar whiskies and other distilled spirits, who, as a means or method of furthering and promoting the sale of said products, do not misrepresent the kind, quality or proof of the whiskies sold by them, and who do not misrepresent the manner or method by which their products are bottled.

PAR. 8. The representations of respondent, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and have the capacity and tendency to mislead and deceive dealers and the purchasing public into the erroneous belief that the whiskey sold by it is 100 percent straight whiskey and not less than 100 proof, and that the whiskey sold and

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distributed by it has been bottled under the direct supervision of respondent itself; and such representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by respondent, thereby diverting trade to respondent from its competitors who do not make the same or similar misrepresentations, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, C. O. Taylor Distributing Company, a corporation, 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, C. O. Taylor Distributing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of alcoholic liquors in interstate commerce, or in the District of Columbia, forthwith cease and desist from:

(1) Representing, by use of the letters "DIST." on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way, by words or abbreviations of like import, (a) that it is a distiller of whiskies, gins, or any other alcoholic beverages; (b) that the said whiskies, gins, or other alcoholic beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place, or places, where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manu-

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facture thereof is completed, unless and until respondent shall actually own, operate, or control such a place, or places:

(2) Representing, by the term or phrase "100 percent straight whiskey," or word, or words, of like import, on the labels attached to the bottles in which it sells and ships such whiskey, that such whiskey is 100 proof, when such is not the fact.

(3) Representing that it supervises the bottling of its said products, when such is not the fact.

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

Syllabus

IN THE MATTER OF

A. F. OF L. TRADE UNION COMMITTEE FOR UNEMPLOYMENT INSURANCE AND RELIEF, ET AL.

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

Docket 2531. Complaint, Aug. 30, 1935—Decision, Nov. 18, 1936

Where the initials "A. F. of L.", through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards, and local unions, had come to be known and understood by said American Federation of Labor, and its local and other unions and affiliated organizations, etc., as above set forth, and by the general public, as the initials for and designation of said American Federation of Labor, and the word "Federationist," through long use by said American Federation for its magazine "American Federationist," had become known to said American Federation of Labor and its various unions, etc., and to the purchasing public as an abbreviated designation for its aforesaid periodical; and thereafter an unincorporated association of persons and a number of individuals who composed a "national committee" to supervise and direct the activities of said association, including publication and distribution of its magazine—

Made use of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and "A. F. of L. Rank and File Federationist" for their said organization and magazine, respectively, notwithstanding fact said organization or association was not a committee of the aforesaid American Federation of Labor and said association or organization's aforesaid magazine, i. e., "A. F. of L. Rank and File Federationist," was not a publication of said American Federation, and use of the aforesaid names was without latter's authority or permission;

With capacity and tendency to mislead and deceive members of such American Federation and the purchasing public into the belief that the aforesaid association or organization was a committee of said American Federation of Labor, and that said "A. F. of L. Rank and File Federationist" was its publication, and to purchase the latter in such erroneous belief, and with result that trade was thereby diverted by said association or organization and individuals from competitors who do not mislead and deceive the purchasing public by the use of names for their publications or associations; to the substantial injury of substantial competition in commerce:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Edward L. Smith for the Commission.

Mr. Harry Sacher, of New York City, for respondents in general, and *Mr. M. Herbert Syme*, of Philadelphia, Pa., for respondent *A. Fleming*.

Complaint

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COMPLAINT

Pursuant to the provisions of an Act of Congress, 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 A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, hereinafter referred to as respondent association, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, hereinafter referred to as respondent individuals, 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 association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is an unincorporated, voluntary association of persons, having its principal office and place of business at 1 Union Square, New York City, in the State of New York. Respondent individuals, Louis Weinstock, Abraham Baskoff, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), all of the city of New York, State of New York; Richard M. Kroon, A. Allen, G. Alston, all of the city of Detroit, State of Michigan; Frank Mozer, A. Fleming, both of the city of Philadelphia, State of Pennsylvania; E. Crews of the city of Pittsburgh, State of Pennsylvania; Robert C. Brown of the city of Butte, State of Montana; Harry Bridges, of the city of San Francisco, State of California; J. P. Anderson of the city of Washington, District of Columbia; Elmer Johnson of the city of Chicago, State of Illinois; C. Taylor of the city of Cleveland, State of Ohio; David Gordon of Middle Village, Long Island, State of New York; Luigi Genovese of the city of Rochester, State of New York; A. W. McPherson of the city of Clairton, State of Pennsylvania; Charles B. Killinger of the city of Flint, State of Michigan; and M. Manes (or Manis), T. L. Major, A. Edwards, M. Balya, G. Spagnol, Karl Maisus (or Masis), A. Weiner, William Thacker and F. Phillips, whose addresses are unknown, are members of the respondent association and compose a "national committee" for the purpose of supervising and directing all of the activities of the respondent association, including the publication and distribution of the "A. F. of L. Rank and File Federationist."

One of the principal purposes for the organization of the respondent association by the respondent individuals was and is the publication each month of a magazine entitled "A. F. of L. Rank and File Federationist." The publication of this magazine began in the month of January 1934, and has, with a few exceptions, continued monthly.

PAR. 2. In the course and conduct of the business of publishing the magazine, "A. F. of L. Rank and File Federationist," hereinbefore mentioned, the respondent individuals, acting through and by the aforesaid respondent association, sell and solicit the sale of the aforesaid magazine between and among the various States of the United States and in the District of Columbia, and cause copies of the aforesaid magazine when sold, to be transported from the place of business of the respondent association in New York City to the purchasers of such copies, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than one year last past a constant current of trade and commerce by the respondent association and respondent individuals in such magazine between and among the various States of the United States.

In the course and conduct of their business the respondent association and respondent individuals are now and for more than one year last past have been in substantial competition with other associations and individuals, and with corporations, firms, and partnerships engaged in the sale of magazines between and among the various States of the United States. Among such competitors is the American Federation of Labor, hereinafter described, which now and for more than one year last past has published a monthly magazine known as the "American Federationist," hereinafter described.

PAR. 3. In 1881 an unincorporated association was organized in the United States under the name of "Federation of Organized Trades and Labor Unions of the United States and Canada," which name was, in the year 1886, changed to "American Federation of Labor." This organization consists of local, national, and international unions, and directly affiliated with it are approximately 482 federations with approximately 725 central boards and approximately 1,350 local unions. The aggregate number of persons affiliated with the American Federation of Labor is approximately 3,000,000.

The initials "A. F. of L.," through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards and local unions, are now and have been for more than one year last past known and understood by the American Federation of Labor, its local, national, and

international labor unions, its affiliated federations, central boards, and local unions, and by the general public, as initials for the aforesaid American Federation of Labor, and as a designation of the aforesaid organization.

The American Federation of Labor has since 1894 published monthly as its official magazine the "American Federationist," which has a circulation throughout the various States of the United States to more than 110,000 subscribers. Through and by its use since 1894 of the term "American Federationist" by the American Federation of Labor for its aforesaid magazine, the word "Federationist," when used as a designation of a magazine, has become known to the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and to the purchasing public as an abbreviated designation for the magazine "American Federationist."

PAR. 4. The use by the respondent association and respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief," and of the name "A. F. of L. Rank and File Federationist," has the capacity and tendency to mislead and deceive members of the American Federation of Labor and the purchasing public into the beliefs that the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is a committee of the American Federation of Labor, and that the said publication is a publication of the American Federation of Labor, and to purchase the aforesaid "A. F. of L. Rank and File Federationist" in such erroneous beliefs; thereby trade is diverted by respondent association and respondent individuals from their competitors who do not by the use of names for their publications or by the use of names for associations, mislead and deceive the purchasing public, and thereby substantial injury is done by respondent association and respondent individuals to substantial competition in interstate commerce.

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

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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 30, 1935, issued and served its complaint in this proceeding upon respondents A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, hereinafter referred to as respondent association, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, hereinafter referred to as respondent individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward L. Smith, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it (Harry Sacher, attorney for the respondents, having waived the introduction of testimony and other evidence in opposition to the allegations of the complaint), and said testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in opposition thereto, but without oral argument, respondents having waived oral argument; and the Commission having duly considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, is an unincorporated, voluntary association of persons, having its principal office and place of business at 1 Union Square, New York City, in the State of New York. Respondent individuals, Louis Weinstock, Abraham Baskoff, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), all of the city of New York, State of New York; Richard M. Kroon, A. Allen, G. Alston, all of the city of Detroit, State of Michigan; Frank Mozer, A. Fleming, both of the city of Philadel-

phia, State of Pennsylvania; E. Crews of the city of Pittsburgh, State of Pennsylvania; Robert C. Brown of the city of Butte, State of Montana; Harry Bridges of the city of San Francisco, State of California; J. P. Anderson of the city of Washington, District of Columbia; Elmer Johnson of the city of Chicago, State of Illinois; C. Taylor of the city of Cleveland, State of Ohio; David Gordon of Middle Village, Long Island, State of New York; Luigi Genovese of the city of Rochester, State of New York; A. W. McPherson of the city of Clairton, State of Pennsylvania; Charles B. Killinger of the city of Flint, State of Michigan; and M. Manes (or Manis), T. L. Major, A. Edwards, M. Balya, G. Spagnol, Karl Maisus (or Masis), A. Weiner, William Thacker and F. Phillips, whose addresses are unknown, are members of the respondent association and compose a "national committee" for the purpose of supervising and directing all of the activities of the respondent association, including the publication and distribution of the "A. F. of L. Rank and File Federationist."

One of the principal purposes for the organization of the respondent association by the respondent individuals was the publication each month of a magazine entitled "A. F. of L. Rank and File Federationist." The publication of this magazine began in the month of January 1934, and continued through October 1935.

PAR. 2. In the course and conduct of the business of publishing the magazine, "A. F. of L. Rank and File Federationist," hereinbefore mentioned, the respondent individuals, acting through and by the aforesaid respondent association, sold and solicited the sale of the aforesaid magazine between and among the various States of the United States and in the District of Columbia, and caused copies of the aforesaid magazine when sold, to be transported from the place of business of the respondent association in New York City to the purchasers of such copies, some located in the State of New York and others located in various other States of the United States, and there was from January 1934, to and until October 1935, a constant current of trade and commerce by the respondent association and respondent individuals in such magazine between and among the various States of the United States.

In the course and conduct of their business the respondent association and respondent individuals have been in substantial competition with other associations and individuals, and with corporations, firms, and partnerships engaged in the sale of magazines between and among the various States of the United States. Among such competitors is the American Federation of Labor, hereinafter described, which now and for more than one year last past has pub-

lished a monthly magazine known as the "American Federationist," hereinafter described.

PAR. 3. In 1881 an unincorporated association was organized in the United States under the name of "Federation of Organized Trades and Labor Unions of the United States and Canada," which name was, in the year 1886, changed to "American Federation of Labor." This organization consists of 110 national and international unions, 1,154 local unions, and about 3,615,000 members.

The initials "A. F. of L.," through their use by the American Federation of Labor and by its local, national, and international labor unions, its affiliated federations, central boards and local unions, are now and for more than one year last past have been known and understood by the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and by the general public, as initials for the aforesaid American Federation of Labor, and as a designation of the aforesaid organization.

The American Federation of Labor has since 1894 published monthly as its official magazine the "American Federationist," which has a circulation throughout the various States of the United States to more than 110,000 subscribers. Through and by its use since 1894 of the term "American Federationist" by the American Federation of Labor for its aforesaid magazine, the word "Federationist," when used as a designation of a magazine, has become known to the American Federation of Labor, its local, national, and international labor unions, its affiliated federations, central boards, and local unions, and to the purchasing public as an abbreviated designation for the magazine "American Federationist."

PAR. 4. Respondent association was not a committee of the American Federation of Labor nor was the aforesaid A. F. of L. Rank and File Federationist, a publication of the American Federation of Labor. The use by the respondent association and by respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and of the name "A. F. of L. Rank and File Federationist" was without the authority or permission of the American Federation of Labor.

PAR. 5. The use by the respondent association and respondent individuals of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief," and of the name "A. F. of L. Rank and File Federationist," has had the capacity and tendency to mislead and deceive members of the American Federation of Labor and the purchasing public into the beliefs that the respondent association, A. F. of L. Trade Union Committee for Unemployment Insur-

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ance and Relief, was a committee of the American Federation of Labor, and that the said publication was a publication of the American Federation of Labor, and to purchase the aforesaid "A. F. of L. Rank and File Federationist" in such erroneous beliefs; thereby trade has been diverted by respondent association and respondent individuals from their competitors who do not mislead and deceive and who have not misled and deceived the purchasing public by the use of names for their publications or by the use of names for associations. Thereby substantial injury has been done by respondent association and respondent individuals to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, and respondent individuals Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (Harry Sacher, attorney for the respondents having waived the introduction of testimony and other evidence in opposition to the allegations of the complaint), and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents herein have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

It is hereby ordered, That the respondent association, A. F. of L. Trade Union Committee for Unemployment Insurance and Relief, and respondent individuals Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, J. P. Anderson, A. Allen, Elmer Johnson, Robert C. Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zukor (or Zucker), C. Taylor, Luigi Genovese, M. Manes (or Manis), T. L. Major, A. Edwards, G. Alston, M. Balya, G. Spagnol, A. W. McPherson, Karl Maisus (or Masis), A. Weiner, William Thacker, E. Crews, F. Phillips, A. Fleming, and Charles B. Killinger and their respective agents, servants and employees, in connection with the sale and offering for sale of magazines in interstate commerce or in the District of Columbia, do forthwith cease and desist from the use of the name "A. F. of L. Trade Union Committee for Unemployment Insurance and Relief" and of the name "A. F. of L. Rank and File Federationist" and of any other name indicating or suggesting that the said respondent association or any of its members constitute a committee of the American Federation of Labor, or that any publication by them or by any of them so sold and offered for sale is a publication of the American Federation of Labor.

And it is hereby further ordered, That the aforesaid respondent association and respondent individuals shall, within 60 days after 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

J. M. TONKIN AND S. M. MODLIN, TRADING AS COLUMBIA
DISTILLING COMPANY, TONKIN DISTRIBUTING COM-
PANY, AND OLD ABBEY DISTILLING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2422. Complaint, June 1, 1935—Decision, Nov. 19, 1936*

- Where two individuals engaged as rectifiers and wholesalers of liquor, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in making gin by redistillation of purchased alcohol, not produced by them, over juniper berries and other aromatics, with still used therefor, and in selling such various products at wholesale in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, and including among their said competitors those who, engaged in manufacturing and distilling from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such beverages, do not use such words as above set forth—
- Represented, through use of word "Distilling" in their trade names, printed on their stationery and on the labels attached to the bottles in which they sold and shipped their products, together with the words, in some cases, "Made by," or "Prepared by," or "Bottled by," or "Bottled for," and in other ways to their customers, and furnished said customers with means of representing to latter's vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by them made through process of distillation from mash, wort, or wash;
- Notwithstanding fact they did not own, operate, or control any such places where such beverages are made by aforesaid process, were not engaged in distilling their said beverages, as long definitely understood in the trade and by the consuming public, i. e., in making same by original distillation from grain, fruit, or vegetable mash, and were not distillers, investment and expenses of which in general are greater than those of rectifiers, and which have a prestige in the minds of the wholesale trade, of advantage to the seller of their products, as controlling the making thereof from start to finish;
- With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies and other spirituous beverages sold by them were by them made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, gins, and other spirituous beverages bottled and sold by them, and of thereby diverting trade to them from their competitors who do not, by their corporate names

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or in any other manner, misrepresent that they are manufacturers by distillation, as above set forth, of such spirituous beverages, for purchase of which from actual distillers and manufacturers there is a preference on the part of a substantial portion of the purchasing public; to the substantial injury of substantial competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Edmond F. Maher, of San Francisco, Calif., 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 J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles, Columbia Distilling Co., Tonkin Distributing Co., and Old Abbey Distilling Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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. Respondents are individuals, J. M. Tonkin and S. M. Modlin, trading under the names and styles, Columbia Distilling Co., Tonkin Distributing Co., and Old Abbey Distilling Co., with offices and principal place of business in the city of San Francisco, State of California. They are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors purchasing, rectifying, blending, and bottling whiskeys, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce 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, they cause their said products when sold to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers some located within the State of California and some located in other States of the United States and in the District of Columbia. In the course and conduct of their business as aforesaid

respondents are now, and for more than one year last past have been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of their business as aforesaid respondents are, and for more than one year last past have been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid respondents have, upon their premises, a still which they use in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondents, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondents distillers, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "Distilling" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of their business as aforesaid, by the use of the word "Distilling" in their trade name, printed on their stationery and on the labels attached to the bottles in which they sell and ship their said products, and in various other ways, respondents represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by them manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact respondents are not distillers, do not distill the said whiskies, gins, or other spirituous beverages by them so bottled, labeled, sold, and transported, and do not own, operate, or control

any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof individuals, firms, partnerships, and corporations who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors individuals, firms, partnerships, and corporations engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondents, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents are manufactured and distilled by them from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents, thereby diverting trade to respondents from their competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 June 1, 1935, issued and served its complaint in this proceeding upon the respondents J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it; and by PGad B. Morehouse, attorney for the Commission, before John W. Addison, and examiner of the Commission theretofore by the Commission duly substituted to take testimony and other evidence in the place and stead of the said W. W. Sheppard; and in opposition to the allegations of the complaint by Edmond F. Maher, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; brief in opposition thereto and oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals, J. M. Tonkin and S. M. Modlin, trading under the names and styles, Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, with offices and principal place of business at 440 Ninth Street in the city of San Francisco, State of California. They are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce 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, they cause their said products when sold to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers some located within

the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of their business as aforesaid respondents are now, and for more than one year last past have been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of their business as aforesaid respondents are, and for more than one year last past have been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages or types, or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation, and sometimes with spirits purchased from other distillers, or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at a distillery rectifying plant, or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ----- Company". If, in the distillery's rec-

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tifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company". Finally, blown (usually in the bottom) in each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-107" designates these respondents. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's permit.

It is not always possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

PAR. 3. Respondents, in the course and conduct of their business, use one or the other of their said trade names on their stationery and on the labels attached to the bottles in which they ship and sell said beverages. On the labels for gin redistilled by respondents, the name is preceded by the words "Distilled by." On labels for cordials and some other products, the name is preceded by "Made by" or "Prepared by." One of the labels received in evidence for Edgewood Straight Pennsylvania Bourbon Whiskey contained the trade name "Old Abbey Distilling Company," with nothing whatever to suggest that respondents were not the distillers of the product. On other whiskey labels, the trade names are preceded by the words "Bottled by" or "Bottled for" and in the case of one label, to wit: a Pine Ridge Whiskey label, the name "Tonkin Distributing Company" is used followed by the designation "Sole distributors," with nothing on that label to indicate that it is a distillery-bottled package. The Commission finds that by the use which respondents make, and have made, of the word "Distilling" in their aforesaid trade names printed on their stationery and on their labels attached to the bottles in which they sell and ship their said products, and in various other ways, respondents represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins and other spirituous beverages therein contained were by them manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondents are not distillers, do not distill the said whiskies, gins, or other spirituous beverages by them so bottled labeled, sold and transported, and do not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

Respondents are rectifiers and warehouse men, not distillers.

Respondents purchase most of the whiskies which they sell from distilleries located in Pennsylvania and Kentucky, and the alcohols which they use in the production of their gin from the Commercial Solvents Company.

Respondents have a still they use in making gin by redistillation of purchased alcohol, not produced by them, over juniper berries and other aromatics, but this redistillation does not make respondents distillers as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been, and still were, actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "distilling" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of the making of beverages by original distillation from grain, fruit, or vegetable mash.

In general, the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondents produce their gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels: "Distilled by -----Distillers." There are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondents, yet it is all done in a distillery, and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumer with respect to such products.

Existing regulations under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, or on their stationery, or on the labels attached to the bottles in which they sell and ship their products.

PAR. 5. A substantial portion of the purchasing public does prefer to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and such representation is a misrepresentation in fact, and has a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondents' products in preference to the products of truthful competitors.

The testimony clearly showed, and the Commission finds, that a prestige attaches in the minds of the wholesale trade to the distiller, and that this prestige is an advantage in overcoming sales resistance; that in the minds of the wholesale trade and the public, the belief that a distiller is controlling the making of such products from start to finish, with all the ingredients going into them within its own establishment, is an advantage to the seller; and that the use of the word "distilling" or "distiller" in a trade or corporate name of a concern gives it a competitive advantage over concerns which do not pursue or practice such characterizations, and which do not purport to be manufacturers when they are not.

The Commission, therefore, finds that the representation of respondents through use of the word "Distilling" in their trade names as aforesaid is calculated to, and has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents are manufactured and distilled by them from

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mash, wort, or wash, and is calculated to, and has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents, thereby diverting trade to respondents from their competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. Because of existing regulations, under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), which regulations became effective August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may sell such resulting product as "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondents by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the respondents, J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, are 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, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and before John W. Addison, a substituted examiner of the Commission theretofore duly designated by it to take testimony and other evidence in the place and stead of the said W. W. Sheppard, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral arguments of counsel for the Commission and for respondents having been waived; and the Commission having made its findings as to the facts and its conclusion that

said 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 ordered, That J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, and the officers, representatives, agents, and employees of each of them in connection with the offering for sale, sale, and distribution by them of whiskies, gins, or other spirituous beverages in interstate commerce or in the District of Columbia (except gins produced by them through a process of rectification whereby alcohol, purchased but not produced by respondents, is redistilled over juniper berries and other aromatics) do cease and desist from:

Representing, through the use of the word "Distilling" in their trade names, on their stationery, advertising, or on the labels attached to the bottles in which they sell and ship their said products, or in any other way by word or words of like import, (a) that they are distillers of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by them manufactured through the process of distillation; or (c) that they own, operate, or control a place or places wherein such products are by them manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, unless and until respondents shall actually own, operate, or control such a place or places.

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

Syllabus

IN THE MATTER OF

WILLIAM W. BABCOCK, TRADING AS NATIONAL CIVIL
SERVICE TRAINING BUREAU

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

Docket 2672. Complaint, Dec. 27, 1935—Decision, Nov. 19, 1936

Where an individual engaged in sale and distribution of correspondence course of study and instruction designed and intended to prepare students for civil service positions with the United States Government; in describing his said business and course and in soliciting sale of latter through advertising matter, application and contract blanks, and through agents and representatives who solicited prospective students, and otherwise—

- (a) Included in trade name employed by him in his aforesaid business the words "Civil Service" and "Bureau," and represented that he or his said business was connected with the United States Government, and that it made "Civil Service Tests," and tests for which students contracted were the regular civil service examinations, and it had been authorized by the Government to select a certain number of students to prepare for civil service positions, and that under the "New Deal" the Government was hand-picking employees and it, i. e., the school, was engaged in such selection, and that payments made by students went to the Government, and school was operating "in strict compliance" with the laws and regulations of the Federal Trade Commission;
- (b) Represented that civil service positions under the Government were open and available and that its students and prospective students could and would be placed in Government positions if they pursued its course of study, that many of its former students had received appointments to such positions, and students enrolling with it would be given positions in Washington as soon as they completed its training;
- (c) Represented that it prepared its students for "General Clerks" and "Internal Revenue Clerks," and that its course of study and instruction afforded adequate and complete training for civil service examinations held by the United States Civil Service Commission, and that part of instruction was under personal supervision and would be in accordance with the qualifications required for the positions desired;
- (d) Represented that it was a large institution with headquarters and instruction staffs in various cities, including Chicago, Kansas City, Philadelphia, and Los Angeles, and that only a limited number of students were to be selected for training in a particular place or district and particular prospects were those thus selected, and that a particular student or prospective student had been awarded a scholarship, and price offered prospective student was a special one and regular price was greater than that offered, and that a Government position was guaranteed and assured on completion of the course, and that it would refund to students money paid by them therefor if they were not satisfied therewith;

The facts being there was no such connection with the Government, it did not give civil service tests, was not authorized or justified in representing that its school was operated in compliance with laws and regulations of the Federal Trade Commission, no such classifications as "general clerks" and "internal revenue clerks" are used by United States Civil Service Commission in holding its examinations, vacancies in Government positions for which it offers training have been comparatively few within recent years, with, usually, long lists of eligibles available in case of vacancies and with very few, if any, examinations held recently for any of the positions for which he offered training, it has no way of placing its students in Government positions, had only one course of study and same training was given to all, notwithstanding asserted preliminary tests to determine qualifications of applicant and instruction to be given, statements and representations respecting limited selections, special prices, etc., were false, refunds were rarely made and contracts in respect thereto made same practically impossible of fulfillment, its only headquarters was at Los Angeles, and its aforesaid various statements and representations were otherwise false and misleading and, insofar as made by his salesmen over a period of years, were permitted by him to continue, notwithstanding repeated notifications by students, parents, public officials, and others to said individuals, who nevertheless continued to accept and proceed under contracts thus secured, accept money collected thereunder, as probable result of such misrepresentation, took no reasonable or adequate measures to rid himself of dishonest salesmen or prevent students of his course from being victimized thereby, nor made restitution adequately, fully, and generally for losses thus incurred, but employed usually, dilatory tactics so that student became discouraged and finally let matter drop;

With tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous beliefs that such various representations were true and to induce them to sign said individual's contracts, pay money to him and his agents and pursue such course of study and instruction as above described because of the erroneous beliefs thus engendered, and to unfairly divert trade to him from competitors engaged in the sale of similar courses and those engaged in other lines of study, and including those who in no wise make use of the methods used by him, his agents and representatives, as set forth, and who do not make such misrepresentations; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John W. Hildrop 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 W. Babcock, doing business under the name and style of National Civil Service Training Bureau, 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. That said respondent, William W. Babcock, doing business under the name and style of National Civil Service Training Bureau, is now and has been for more than one year last past engaged in the sale and distribution in interstate commerce of a course of study and instruction designed and intended for preparing students thereof for examinations for various civil service positions under the United States Government, which said course of study and instruction is pursued by correspondence. Said respondent, in conducting his said business, has his office and principal place of business in the city of Los Angeles in the State of California, and causes said course of study and instruction, consisting of pamphlets, study and question sheets, and other printed or mimeographed matter to be transported in interstate commerce from his said place of business in California to, into, and through States of the United States other than California to various and numerous persons in such other States to whom said course of study and instruction is or has been sold. Formerly said respondent conducted said business under the name of William Penn Extension University and later under the name of William Penn Institute. Recently respondent has registered for his use the trade name National Training Institute.

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 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 and distribution, 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. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said course of study and instruction with such other individuals, firms, and corporations.

PAR. 3. That the name, National Civil Service Training Bureau, used by said respondent in conducting his said business, implies and has the tendency and capacity to create the belief among persons

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solicited to pursue respondent's said course of study, that said National Civil Service Training Bureau is a part of, or is connected with, or is an agency of the Government of the United States. The word "National" is a term widely and generally used in referring to the United States Government or its agencies, or to institutions under its direction or supervision. The term "civil service" is widely and generally used to designate a class of employees of the United States Government and as a part of the name of the governmental agency known as the "Civil Service Commission." The word "Bureau" is widely and generally used in referring to governmental institutions and many of such institutions are officially so designated. Such official connection is further implied by the use by respondent of various statements and terms in his advertising matter and other literature, such as the following appearing on the application signed by respondent's students:

Special Registration Application.

Operated in Strict Compliance with the Laws and Regulations of the Federal Trade Commission.

I desire to secure an appointment under Civil Service and agree to take all examinations I am eligible for. The physical requirements are understood.

It is also understood that I am entitled to all your services until appointed.

Further, each lesson sent out by respondent is captioned:

CIVIL SERVICE TEST

In truth and in fact neither respondent nor his school nor anyone connected therewith has any connection whatever with the United States Government or represents the same or any department or agency thereof nor is respondent or his school authorized or justified in representing that said school is operated in compliance with the laws and regulations of the Federal Trade Commission.

PAR. 4. That respondent, through his agents, represents to prospective students that civil service positions under the United States Government are open and available; that examinations for such positions will be held in the near future or at definite times stated; and that such prospective students can be placed in Government positions if they pursue respondent's course of study when such are not the facts or were not at the time such representations were made. Vacan-

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cies in Government positions for which respondent offers training have been comparatively few within the last several years, and, usually, when vacancies occur in such positions, long lists of eligibles have been and are available for filling the same. Very few, if any, examinations have been held within recent years for many of the positions for which respondent offers training. Respondent has no way or means of placing his students in Government positions.

PAR. 5. That respondent, in advertising his course of study and instruction, represents that he prepares his students for examinations for various Government positions including what he terms "General Clerks" and "Internal Revenue Clerks," when in truth and in fact no such classifications are used by the United States Civil Service Commission in holding its examinations nor are such designations used in the Civil Service in designating positions for which civil service examinations are held.

PAR. 6. That respondent, his agents, and representatives, in selling his said course of study and instruction as aforesaid, represent to prospective students that only a certain limited number of students are to be selected for training in a particular place, area or district, and that the prospective students thus approached are the ones so selected. when in truth and in fact, respondent, his agents, and representatives solicit and enroll for his course all who will sign his applications and pay the money charged for his course. No such limitations as to number of students trained are applied or enforced. Such misrepresentations are further used by respondent, his agents, and representatives to further the belief among prospective students that respondent's school is connected with the Government and that such selection of students assures appointment to a Government job. Respondent, in advertising his course of study and instruction, represents that his course affords adequate and complete training for large numbers, if not all, of the civil service examinations that are held by the United States Civil Service Commission, and that certain preliminary test used by him is for the purpose of determining the qualifications of the applicant and the instruction to be given, when in truth and in fact, respondent has only one course of study and instruction for such purpose and the same training is given to all who enroll regardless of what particular Government position they desire to be qualified for.

PAR. 7. That respondent, in his advertising matter, and also through his agents and representatives, makes various and numerous representations as to the desirability of Government positions, salaries, leaves, opportunity for promotion, and number of appointments made which are exaggerated and inaccurate and which give

prospective students of his course of study and instruction an erroneous idea of work in the Government service.

PAR. 8. That respondent, in certain of his contracts used, and through his agents and representatives, makes representations that money paid by students will be refunded if they are not satisfied when, in truth and in fact, money paid by students is rarely refunded by respondent. Some of the contract forms used by respondent have provisions therein that such refund will only be made after the student takes two civil service examinations, which said contingency, under conditions prevailing during the last few years, is practically impossible of fulfillment and makes the agreement meaningless. Such situation is not apparent to or known to the student.

PAR. 9. Respondent, in his printed matter, on his letterheads, and through his salesmen, represents that his school is a large institution with headquarters and instruction staffs in various cities including Chicago, Kansas City, Philadelphia, and Los Angeles. In truth and in fact the headquarters of his school is and has been at Los Angeles only and no administrative or instruction staff has been or is maintained by him at any other place. The other places so named are or have been either mere mailing addresses or addresses of offices of his salesmen or sales manager.

PAR. 10. That respondent, in the sale of his said course of study and instruction, makes use of salesmen who solicit prospective students in selling the same. Such salesmen are respondent's agents and representatives. Many of such salesmen have been accustomed to, and did and do, make various false and misleading representations in promoting the sale of respondent's course by means of which they are enabled to and do secure the payment of money from such prospective students and their contracts for the payment of additional sums. Among such false and misleading representations made by such salesmen are the following:

1. That the tests for which students contract are the regular Civil Service examinations.
2. That the student will be given a position in Washington, D. C., as soon as he completes the training offered by respondent.
3. That the salesman represents the United States Government or some agency thereof.
4. That the prospect interviewed has been awarded a scholarship.
5. That the price named is a special price.
6. That the regular price for the instruction is some price named that is much higher than the price charged.
7. That a Government job is guaranteed and assured on completion of the course offered.

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8. That many of respondent's former students had received appointments to positions.

9. That respondent's school had been authorized by the Government to select a certain number of students to prepare for civil service positions.

10. That part of the instruction would be under personal supervision.

11. That money paid would be refunded if the student should not be satisfied to continue at any time.

12. That the salesman was working for the Government.

13. That the instruction given would be in accordance with the qualifications required for the position desired.

14. That the school would keep the student informed as to civil service examinations held.

15. That the student would get a set of books with the course.

16. That under the "New Deal" the Government was hand-picking employees and that respondent's school was engaged in such selection.

17. That payments made by the students went to the Government.

In truth and in fact, all of such representations made by respondent's salesmen are false and misleading and not in accordance with the facts. Such representations have been accustomed to be made by many of respondent's salesmen over a period of several years. Respondent has been repeatedly notified and informed of such misrepresentations by his students, their parents, public officials and others. Nevertheless, respondent has continued to accept and proceed under contracts for instruction so secured and accept money paid thereunder after having thus been put upon notice that the contracts so secured were secured and the money collected thereunder was paid as the probable result of such misrepresentations. No reasonable or adequate measures have been or now are taken by respondent to rid himself of dishonest salesmen or to prevent students of his course from being victimized by their misrepresentations. Neither does respondent adequately, fully, and generally make restitution for losses thus incurred. In only rare cases is money refunded in such instances of deception. In nearly all cases dilatory tactics are used by respondent with the result that the student gets discouraged and finally lets the matter drop.

PAR. 11. That the representations of respondent, his agents, and representatives, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars aforesaid and to induce them to sign his said contracts, to pay money to respondent and his agents, and to pursue said course of study and instruction as herein described, because of the erroneous

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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 to those offered by respondent, as well as those so engaged in such sale in other lines of study. There are, among the competitors of respondent, those who in no wise make use of the methods used by respondent and his agents and representatives, as herein set out, and who do not make the same or similar misrepresentations as made by respondent, his agents, and representatives, as stated herein.

PAR. 12. 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.

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 December 27, 1935, issued and served its complaint in this proceeding upon the respondent, William W. Babcock, trading as National Civil Service Training Bureau, charging him with unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filing no answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it; no attorney appeared for the respondent, he being present in his own proper person at the hearings had in Los Angeles, Calif., and said respondent introduced no testimony or evidence in his behalf except that respondent filed a statement in the record, consisting of five pages, as Respondent's Exhibit No. 1 showing his connection with the business for the last thirty-five years; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being now 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 said respondent, William W. Babcock, doing business under the name and style of National Civil Service Training Bureau, is now and has been for more than one year last past engaged in the sale and distribution in interstate commerce of a course of study and instruction designed and intended for preparing students thereof for examinations for various civil service positions under the United States Government, which said course of study and instruction is pursued by correspondence. Said respondent, in conducting his said business, has his office and principal place of business in the city of Los Angeles in the State of California, and causes said course of study and instruction, consisting of pamphlets, study and question sheets and other printed or mimeographed matter to be transported in interstate commerce from his said place of business in California to, into, and through States of the United States other than California to various and numerous persons in such other States to whom said course of study and instruction is or has been sold. Formerly said respondent conducted said business under the name of William Penn Extension University and later under the name of William Penn Institute. Recently respondent has registered for his use the trade name National Training Institute.

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 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 and distribution, 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. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said course of study and instruction with such other individuals, firms, and corporations.

PAR. 3. The name, National Civil Service Training Bureau, used by said respondent in conducting his said business, implies and has the tendency and capacity to create the belief among persons solicited to pursue respondent's said course of study that said National Civil Service Training Bureau is a part of, or is connected with, or

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is an agency of the Government of the United States. The word "National" is a term widely and generally used in referring to the United States Government or its agencies, or to institutions under its direction or supervision. The term "civil service" is widely and generally used to designate a class of employees of the United States Government and as a part of the name of the governmental agency known as the "Civil Service Commission." The word "Bureau" is widely and generally used in referring to governmental institutions and many of such institutions are officially so designated. Such official connection is further implied by the use by respondent of various statements and terms in his advertising matter and other literature, such as the following appearing on the application signed by respondent's students:

Special Registration Application.

Operated in Strict Compliance with the Laws and Regulations of the Federal Trade Commission.

I desire to secure an appointment under Civil Service and agree to take all examinations I am eligible for. The physical requirements are understood.

It is also understood that I am entitled to all your services until appointed.

Further, each lesson sent out by respondent is captioned:

CIVIL SERVICE TEST

In truth and in fact neither respondent nor his school nor anyone connected therewith has any connection whatever with the United States Government or represents the same or any department or agency thereof nor is respondent or his school authorized or justified in representing that said school is operated in compliance with the laws and regulations of the Federal Trade Commission.

PAR. 4. Respondent, through his agents, represents to prospective students that civil service positions under the United States Government are open and available; that examinations for such positions will be held in the near future or at definite times stated; and that such prospective students can be placed in Government positions if they pursue respondent's course of study when such are not the facts or were not at the time such representations were made. Vacancies in Government positions for which respondent offers training have

been comparatively few within the last several years, and usually, when vacancies occur in such positions, long lists of eligibles have been and are available for filling the same. Very few, if any, examinations have been held within recent years for many of the positions for which respondent offers training. Respondent has no way or means of placing his students in Government positions.

PAR. 5. Respondent, in advertising his course of study and instruction, represents that he prepares his students for examinations for various Government positions including what he terms "General Clerks" and "Internal Revenue Clerks," when in truth and in fact no such classifications are used by the United States Civil Service Commission in holding its examinations nor are such designations used in the civil service in designating positions for which civil service examinations are held.

PAR. 6. Respondent, his agents and representatives, in selling his said course of study and instruction as aforesaid, represent to prospective students that only a certain limited number of students are to be selected for training in a particular place, area or district, and that the prospective students thus approached are the ones so selected, when in truth and in fact, respondent, his agents, and representatives solicit and enroll for his course all who will sign his applications and pay the money charged for his course. No such limitations as to number of students trained are applied or enforced. Such misrepresentations are further used by respondent, his agents and representatives to further the belief among prospective students that respondent's school is connected with the Government and that such selection of students assures appointment to a Government job. Respondent in advertising his course of study and instruction, represents that his course affords adequate and complete training for large numbers, if not all, of the civil service examinations that are held by the United States Civil Service Commission, and that a certain preliminary test used by him is for the purpose of determining the qualifications of the applicant and the instruction to be given, when in truth and in fact, respondent has only one course of study and instruction for such purpose and the same training is given to all who enroll regardless of what particular Government position they desire to be qualified for.

PAR. 7. Respondent, in his advertising matter, and also through his agents and representatives, makes various and numerous representations as to the desirability of Government positions, salaries, leaves, opportunity for promotion and number of appointments made which are exaggerated and inaccurate and which give prospective stu-

dents of his course of study and instruction an erroneous idea of work in the Government service.

PAR. 8. Respondent, in certain of his contracts used, and through his agents and representatives, makes representations that money paid by students will be refunded if they are not satisfied when, in truth and in fact, money paid by students is rarely refunded by respondent. Some of the contract forms used by respondent have provisions therein that such refund will only be made after the student takes two civil service examinations, which said contingency, under conditions prevailing during the last few years, is practically impossible of fulfillment and makes the agreement meaningless. Such situation is not apparent to or known to the student.

PAR. 9. Respondent, in his printed matter, on his letterheads and through his salesmen, represents that his school is a large institution with headquarters and instruction staffs in various cities including Chicago, Kansas City, Philadelphia, and Los Angeles. In truth and in fact the headquarters of his school is and has been at Los Angeles only and no administrative or instruction staff has been or is maintained by him at any other place. The other places so named are or have been either mere mailing addresses or addresses of offices of his salesmen or sales manager.

PAR. 10. Respondent, in the sale of his said course of study and instruction, makes use of salesmen who solicit prospective students in selling the same. Such salesmen are respondent's agents and representatives. Many of such salesmen have been accustomed to, and did and do, make various false and misleading representations in promoting the sale of respondent's course by means of which they are enabled to and do secure the payment of money from such prospective students and their contracts for the payment of additional sums. Among such false and misleading representations made by such salesmen are the following:

1. That the tests for which students contract are the regular civil service examinations.

2. That the student will be given a position in Washington, D. C., as soon as he completes the training offered by respondent.

3. That the salesman represents the United States Government or some agency thereof.

4. That the prospect interviewed has been awarded a scholarship.

5. That the price named is a special price.

6. That the regular price for the instruction is some price named that is much higher than the price charged.

7. That a Government job is guaranteed and assured on completion of the course offered.

8. That many of respondent's former students had received appointments to positions.

9. That respondent's school had been authorized by the Government to select a certain number of students to prepare for civil service positions.

10. That part of the instruction would be under personal supervision.

11. That money paid would be refunded if the student should not be satisfied to continue at any time.

12. That the salesman was working for the Government.

13. That the instruction given would be in accordance with the qualifications required for the position desired.

14. That the school would keep the student informed as to Civil Service examinations held.

15. That the student would get a set of books with the course.

16. That under the "New Deal" the Government was hand picking employees and that respondent's school was engaged in such selection.

17. That payments made by the students went to the Government.

In truth and in fact, all of such representations made by respondent's salesmen are false and misleading and not in accordance with the facts. Such representations have been accustomed to be made by many of respondent's salesmen over a period of several years. Respondent has been repeatedly notified and informed of such misrepresentations by his students, their parents, public officials, and others. Nevertheless, respondent has continued to accept and proceed under contracts for instruction so secured and accept money paid thereunder after having thus been put upon notice that the contracts so secured were secured and the money collected thereunder was paid as the probable result of such misrepresentations. No reasonable or adequate measures have been or now are taken by respondent to rid himself of dishonest salesmen or to prevent students of his course from being victimized by their misrepresentations. Neither does respondent adequately, fully, and generally make restitution for losses thus incurred. In only rare cases is money refunded in such instances of deception. In nearly all cases dilatory tactics are used by respondent with the result that the student gets discouraged and finally lets the matter drop.

PAR. 11. The representations of respondent, his agents and representatives, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous beliefs that the various representations made by the respondent, as hereinabove set forth, are true and to induce them to sign his said contracts, to pay money to respondent and his agents, and to pursue said course of study and instruction as herein described,

because of the erroneous beliefs engendered as above set forth, and to unfairly divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondent, as well as those so engaged in such sale in other lines of study. There are, among the competitors of respondent, those who in no wise make use of the methods used by respondent and his agents and representatives, as herein set out, and who do not make the same or similar misrepresentations as made by respondent, his agents, and representatives, as stated herein. As a result of the acts, practices, and representations hereinabove set out, substantial injury was done by respondent to such competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, William W. Babcock, doing business under the name and style of National Civil Service Training Bureau, 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, 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, to which no answer was filed by respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, the respondent offering no testimony or evidence, and brief of counsel for Federal Trade Commission filed herein, 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 William W. Babcock, doing business under the name and style of National Civil Service Training Bureau, and as doing business under any other name, style, or designation, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of courses of study and instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist:

(a) From representing, that the respondent, as an individual or doing business under the name and style of National Civil Service Training Bureau, or by any other name or designation, is connected with, in any way, or is an agent or an agency of, the Government of the United States;

(b) From representing that the respondent is operating "in strict compliance," or any other form or degree of compliance, with the laws and regulations of the Federal Trade Commission;

(c) From advertising or representing in any manner or form that respondent makes any "civil service test";

(d) From representing in any manner that civil service positions under the United States Government are open and available unless and until in truth and in fact the Civil Service Commission of the United States has advertised or designated that such civil service positions are open and available and that examinations for such positions will be held in the near future or at definite times stated;

(e) From representing that students and prospective students of respondent can and will be placed in Government positions if they pursue respondent's course of study;

(f) From representing that respondent prepares his students for examinations for "general clerks" and "internal revenue clerks" unless and until in truth and in fact such classifications are used by the United States Civil Service Commission;

(g) From representing that only a limited number of students are to be selected for training in a particular place, area or district and that any particular prospective students are the ones so selected;

(h) From representing that respondent's course of study and instruction affords adequate and complete training for civil-service examinations which are held by the United States Civil Service Commission;

(i) From representing that respondent will refund to students money paid by them for respondent's course of study if such students are not satisfied therewith;

(j) From representing that respondent's school is a large institution with headquarters and instruction staffs in various cities, including Chicago, Kansas City, Philadelphia, and Los Angeles, unless and until respondent does maintain and operate schools in Chicago, Kansas City, Philadelphia, Los Angeles, and elsewhere;

(k) From representing that the tests for which students contract are the regular civil service examinations;

(l) From representing that students enrolling with respondent will be given a position in Washington, D. C., as soon as such students complete the training offered by respondent;

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(m) From representing that any student or prospective student has been awarded a scholarship;

(n) From representing that the price for respondent's course of instruction offered any prospective student is a special price or that the regular price charged for respondent's course of instruction is greater than that offered any particular student or prospective student;

(o) From representing that any Government position is guaranteed and assured on completion of the course offered;

(p) From representing that many of respondent's former students have received appointments to positions in the United States Government;

(q) From representing that respondent has been at any time authorized by the United States Government to select a certain number or any number of students to prepare for civil service positions;

(r) From representing that any part of the instruction imparted to students will be under personal supervision;

(s) From representing that the instructions given to students will be in accordance with the qualifications required for the positions desired;

(t) From representing that students will get a set of books with the course of instruction;

(u) From representing that under the "New Deal" the Government is handpicking employees and that respondent's school is engaged in such selection;

(v) From representing that payments made by students, or any part thereof, go to the United States Government; and

(w) From the use of the term "Civil Service" and the word "Bureau," or either of them in the name under which his said business is conducted, or the use of any other word or expression therein which implies or suggests any connection with the Civil Service Commission of the United States Government, or the use of any such similar representation made in any other manner.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF
SUTTON LABORATORIES, INC.

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

Docket 2739. Complaint, Mar. 7, 1936—Decision, Nov. 19, 1936

Where a corporation engaged in the manufacture of a proprietary preparation called "Linoil" for the treatment of skin diseases and in the sale thereof to retail drug stores, jobbing houses, over the counter, and directly through the mails to the purchasing and consuming public in various States—

(a) Represented in newspaper and radio advertising and through billboards, counter display cards, and circulars distributed by retailers to their customers, generally and without qualification, that said preparation was an effective treatment for various skin conditions known as athlete's foot, ringworm, eczema, and similar infections, the facts being that some of the conditions for which it thus offered its said preparation were fungus infections, the nature of the effective treatment of which varied with the nature of the disease and the progress of the disorder, depending on the cause thereof and whether in an acute, subacute or chronic state, and required, if the disease was the result of metabolic disorder, treatment of the cause as well as the external evidences of the disease, and that diagnosis by a qualified practitioner was necessary to determine cause and proper treatment for each disease, including eczema, which might be result of metabolic disorders or be a purely local disaffection or congestion from use of drugs, and was not a fungus disease and called for a much milder preparation than in the case of the other, and said corporation's aforesaid unqualified representations that said preparation was an effective remedy in all cases of said various ailments or conditions, irrespective of the cause or stage of the disorder and whether acute, subacute or chronic, were untrue; and

(b) Displayed its corporate name, including words "Laboratories" and "Durham, N. C.," upon counter display cards and labels attached to the jars in which said preparation was packed and sold and in circulars and match folders, notwithstanding fact that it did not own or operate a laboratory in Durham, N. C., but product in question was made elsewhere in the prescription department of the drug store of its president, who personally compounded said preparation in the same place in which prescriptions were filled, and no special equipment was employed in manufacture thereof;

With result of creating in the minds of the public false impression as to the size and nature of its business and of causing such public to believe that it maintained a laboratory in which said preparation was manufactured at aforesaid North Carolina city, and with capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the erroneous belief that said product was an effective remedy or cure for eczema and efficacious in all cases of ringworm and similar fungus infections, irrespective of the cause or the stage of the disease, and of causing such public, in reliance upon such representation, to purchase substantial quantity of its aforesaid preparation and of unfairly diverting thereby trade to it from competitors who likewise manufacture and sell proprietary

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preparations designed as remedies for skin diseases and who do not in any way misrepresent the therapeutic value of their competing products nor the nature or size of their business or manufacturing establishment; to their substantial injury and prejudice:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Henry A. Whitfield, of Chapel Hill, N. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, 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 Sutton Laboratories, Inc., a corporation, hereinafter designated 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, Sutton Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal place of business at Chapel Hill, N. C. It is now, and for several years last past has been, engaged in advertising and selling Linoil, a preparation advertised and sold as a treatment for diseases of the feet, between and among the various States of the United States and in the District of Columbia, and now causes and for more than one year last past has caused such product when sold by it to be shipped from its place of business in Chapel Hill, N. C., to the purchasers thereof, some located in the State of North Carolina, and others located in the various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in Linoil between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale of remedies for diseases of the feet between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its Linoil, to purchasers and prospective purchasers thereof, located

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in various States of the United States, represents, and for more than one year last past has represented, in and by its advertising matter, which consists of radio continuities, hand bills, cardboard posters, match folders, and other forms of advertising media, that its remedy, Linoil, will cure or is an effective treatment for athlete's foot, ringworm, eczema, "toe itch," and other skin irritations. Among the advertising claims broadcasted over radio station WPTF are the following:

Are your feet crippled with Athlete's Foot to the extent that you are forced to sit on the side lines while your friends enjoy the fine and exhilarating summer sports? You can get rid of this condition. Go to your druggists and ask for a jar of LINOIL. This preparation was proved exceptionally effective in relieving foot ills, ringworm, eczema, and other skin irritations. LINOIL is made with a vanishing cream base . . . does not stain and has no disagreeable odor.

For successful treatment of Athlete's Foot, Eczema, Ringworm, and other skin irritations and diseases . . . use LINOIL. This famous remedy which has been privately used for several years, is now available to everyone at a very moderate cost. Made with a vanishing cream base, LINOIL has no disagreeable odor and does not stain. It is now on sale at drug stores in 50¢ jars. Get a jar of LINOIL from your druggist today and banish irritations quickly and effectively.

Respondent causes to be circulated among the purchasing public small pasteboard packages of matches. On the outside of said packages appear the following:

For
Athlete's
Foot
LINOIL
Toe Itch
Ringworm
Eczema, etc.

Sutton Laboratories
Durham, N. C.
LINOIL

Arranged at various conspicuous places in respondent's drug store are inclined cardboard posters to each of which it attached a bottle of Linoil. Said posters bear the following advertising:

LINOIL
for—
TOE ITCH
JOCK ITCH
GOLFER'S ITCH
ATHLETE'S FOOT
RINGWORM, ETC.

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Price

50¢

SUTTON LABORATORIES, INC.
DURHAM, N. C.

Respondent also causes to be circulated among the purchasing public, hand bills bearing the following announcement:

LINOIL
FOR
RINGWORM of the FOOT
ITCHING FEET AND TOES

Also Known as
"ATHLETE'S FOOT"
"GYM FOOT"
"GOLFER'S ITCII"
ECZEMA, etc.

For sale

In all Drug & Shoe Stores

SUTTON LABORATORIES
Durham, N. C.

PAR. 3. In truth and in fact respondent's preparation, Linoil, will not cure eczema; is not effective in the treatment of athlete's foot, ringworm, or other fungus infections of the feet, in all cases; nor is Linoil an adequate or safe treatment for "toe itch," of all forms.

PAR. 4. The use by respondent of the representations set forth herein has had and now has the capacity and tendency to lead purchasers and prospective purchasers into the belief that they themselves can diagnose the ailments or diseases of the feet from which they are suffering and thereby determine the cause or causes of said ailments or diseases and to purchase respondent's product in such erroneous belief. Only by a thorough diagnosis, made by a competent physician, can the causes of the various ailments and diseases of the feet be ascertained and successfully treated. Respondent is not a physician and there is no medical doctor connected with respondent's business in any capacity. Purchasers or prospective purchasers of Linoil are not given a medical examination for the purpose of determining the particular disease or diseases from which they are suffering and the cure, if any, for same.

PAR. 5. Respondent clearly implies and represents through the statements contained in its advertising media, and through the use of the word "Laboratories" in its corporate name, and otherwise, that it maintains a laboratory wherein Linoil is compounded, manu-

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factured, or otherwise prepared. Its postoffice address is listed as Sutton Laboratories, Durham, N. C., at which place it rents a post-office lock box. In truth and in fact respondent does not own or operate a laboratory wherein scientific tests are made and experiments conducted. Linoil is made and prepared for shipment in the drug department of respondent's drug store located at Chapel Hill and not at Durham, N. C.

PAR. 6. Respondent clearly implies by the use of the term Linoil that linseed oil is used in the manufacture of its preparation and is a component part thereof. In truth and in fact linseed oil is not present in the preparation.

PAR. 7. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead and deceive a substantial portion of the purchasing public into the belief that such representations are true and to purchase substantial quantities of said Linoil from respondent in such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of foot remedies who do not respectively misrepresent in any way the therapeutic values of their products, the material from which their preparations are made, or the existence of a laboratory in connection with their business, who likewise advertise, sell, and distribute remedies for diseases of the feet among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce as herein set out.

PAR. 8. The above alleged acts and practices of respondent are all to the injury and 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, on March 7, 1926, issued and served its complaint in this proceeding upon respondent Sutton Laborato-

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ries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Henry A. Whitfield, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint, respondent having declined to file brief or apply for oral argument; and the Commission having duly considered the same, and being now 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, Sutton Laboratories, Inc., is a corporation organized in 1933, and doing business under the laws of the State of North Carolina, having its principal office and place of business at Chapel Hill, N. C.

PAR. 2. Respondent is, and has been at all times since the said date of its incorporation, engaged in the manufacture and sale of Linoil, a proprietary preparation intended and designed to be used in the treatment of skin diseases, to retail drug stores, jobbing houses, over the counter, and directly through the mails, to the purchasing and consuming public located in various States of the United States other than the State of North Carolina. It has caused, and still causes, its said Linoil when so sold to be transported in commerce from its place of business in the city of Chapel Hill, State of North Carolina, into and through various other States of the United States, to the said purchasers thereof.

PAR. 3. At all times since said incorporation the respondent has been in substantial competition in interstate commerce with other corporations, individuals, and partnerships engaged in the manufacture and sale of other proprietary preparations designed and intended for use in treatment of diseases of the skin.

PAR. 4. Linoil is compounded by J. L. Sutton, a registered pharmacist and president of the respondent corporation, in the prescription department of his drug store at Chapel Hill, N. C., in accordance with

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his own secret formula. The product has been on the market ten or twelve years, five years before it was given a name. A qualitative analysis of Linoil follows:

ANALYSIS—NET WEIGHT 1.6 OZS.

Qualitative tests:	Absent:
Salicylic Acid	Heavy metals
Benzoic Acid	Borax
Cinnamic Acid	Phenol
Water	Sulphates
Starch	Chlorides
Present:	
Lanolin	Resorcinol
Sulphur	
Calcium (in ash)	

	Percent
Ash.....	0.12
Water (Xyloil Method).....	17.00
Chloroform Soluble Material.....	82.9
Total Acids (Salicylic, Benzoic, Cinnamic and some fatty acids) calculated as Salicylic Acid.....	10.75
	11.03
	5.29
Salicylic Acid (By bromination of total acids).....	5.28

Product is a brown salve having a sharp rancidlike and an aromatic odor.

Examination indicates it consists essentially of salicylic acid, starch, and a small amount of sulphur, incorporated in a base of benzoinated lard and lanolin, with the possible addition of a fatty acid.

PAR. 5. In promoting the sale of Linoil, respondent, formerly through newspaper and radio advertising, and recently through billboards, counter display cards, and circulars distributed by retailers to their customers, represented generally and without qualification that Linoil is an effective treatment for various skin conditions known as athlete's foot, ringworm, eczema, toe itch, jock itch, and similar infections. The circulars sent out to retailers for distribution to their customers contain the following statements:

Linoil For Ringworm of the Foot, Itching Feet and Toes
 Also known as "Athlete's Foot", "Golfer's Itch", "Gym Foot", Eczema, etc.

The counter cards read:

Linoil for Toe Itch, Jock Itch, Golfer's Itch, Athlete's Foot, Ringworm, etc. Labels on the jars read: "Linoil used for Toe Itch, Ringworm, Jock Itch, Eczema, etc." In its radio advertising, respondent represents that Linoil "quickly relieves Athlete's Foot, Ringworm, Eczema, Toe Itch and Athletic Supporter Itch", and that "it does kill the germ that causes all this trouble."

PAR. 6. The foot disaffections commonly known as ringworm, athlete's foot, toe itch, and the other conditions covered by respondent's representations, with the exception of eczema, are fungus infections of a similar nature, some if not all of the terms being interchangeable. According to the weight of the expert medical testimony, the nature of effective treatments for these diseases varies with the nature of the disease and the progress of the disorder, depending on the cause of the disorder and whether it is in an acute, subacute or chronic state. If the disease is the result of a metabolic disorder, the cause must be treated together with the external evidences of the disease. The application of ointments alone is insufficient. The particular conditions, such as ringworm, toe itch, etc., result from the presence of different forms of malignant life—some resulting from animal and some from vegetable parasites. One of these forms of toe itch results from the entrance of the hookworm larvae into the body and such a condition cannot be relieved by the same treatment required for other forms of toe itch. There is a scaly, chronic type of ringworm, comprising a large percentage of the cases, which requires different treatment from the 25 to 40% constituting the non-scaly type. The vegetable parasite is of six or eight varieties. Diagnosis by a qualified practitioner is necessary to determine the cause of and the proper treatment for each disease, and the layman is not competent to make such a diagnosis.

Eczema on the other hand, might be caused from metabolic disorders or it might be a purely local disaffection or congestion from the use of drugs. It is not a fungus disease, and a much milder preparation would be used to allay the itching than would be used in fungus diseases. The proper method of treating eczema involves a determination of the cause of the ailment by a competent medical authority and treatment of the metabolic disorder together with the external evidences of the disease.

Respondent's representations that Linoil is an effective remedy or cure for eczema, or that it will prove efficacious in all cases of ringworm, athlete's foot, jock itch, toe itch, and similar fungus infections, irrespective of the cause or stage of the disorder, whether it be acute, subacute or chronic, are untrue.

PAR. 7. Respondent's counter displays and the labels attached to the jars in which Linoil is packed and sold contained the expression, "Sutton Laboratories, Inc., Durham, N. C.," and its circulars and match folders display the expression, "Sutton Laboratories, Inc., Durham, N. C.," thereby creating in the minds of the public a false impression as to the size and nature of respondent's business, and also causes the public to believe that respondent maintains a laboratory,

in which Linoil is manufactured, at Durham, N. C. In truth and in fact respondent does not own or operate a laboratory in Durham, N. C., but the product, Linoil, is made in the prescription department of the Chapel Hill drug store of J. L. Sutton, president of respondent, who compounds the product himself. The work is done in the same place where prescriptions are filled, and there is no special equipment employed in manufacturing the product.

PAR. 8. It is alleged in the Commission's complaint that respondent implies, by use of the term Linoil, its product includes linseed oil. The product does not include linseed oil, nevertheless, linseed oil is not a particularly desirable ingredient in preparations designed as remedies for fungus infections and other diseases of the skin, and is not so considered by the laity. The Commission, therefore, finds that the evidence does not support the allegation contained in paragraph 6 of the complaint.

PAR. 9. The representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead and deceive a substantial number of the purchasing public into the erroneous belief that Linoil is an effective remedy or cure for eczema, and that it is efficacious in all cases of ringworm, athlete's foot, jock itch, toe itch and similar fungus infections, irrespective of the cause or the stage of the disease. Said representations have caused and do cause said purchasing public, relying upon the truth of said representations to purchase substantial quantities of respondent's product, Linoil.

PAR. 10. There are among the competitors of respondent, corporations, firms, and individuals who likewise manufacture and sell proprietary preparations designed as remedies for skin diseases, among the various States of the United States and in the District of Columbia, who do not in any way misrepresent the therapeutic values of their competing products, nor the nature or size of their business or manufacturing establishment. Respondent's acts and practices, as herein above set forth, tend to, and do, unfairly divert trade to respondent from such competitors, to the substantial injury and prejudice of said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Sutton Laboratories, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

23 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein in support of the complaint, respondent having declined to file brief or apply for oral argument, 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, Sutton Laboratories, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the product known as Linoil or any product of substantially the same composition and ingredients sold under the name Linoil or under any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, through radio advertising, counter displays, circulars, or through any other method whatever that:

1. Linoil is an effective remedy or cure for eczema;
2. Linoil is an effective remedy for all diseases of the skin;
3. Linoil is an effective remedy for any disease resulting from a metabolic disorder.
4. It maintains a laboratory at Durham, N. C.

Nothing in this order shall be construed as preventing respondent from making proper therapeutical claims or recommendations which are based upon reputable medical opinion or recognized medical or pharmaceutical literature.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF
IRISH HILLS DISTILLERIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2462. Complaint, June 27, 1935—Decision, Nov. 20, 1936*

Where a corporation engaged as wholesaler and rectifier of distilled spirits, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in selling the same to wholesale and retail purchasers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of such beverages and in selling the same as aforesaid, and with those engaged in purchasing, rectifying, blending, bottling, and selling such beverages, and including among its aforesaid competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such beverages, do not use such words as aforesaid—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers and supplied the same with means of representing to their vendee-retailers and ultimate consuming public that it was a distiller and that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill such beverages through continuous closed pipes and vessels until manufacture thereof is complete, as definitely understood and implied to the trade and ultimate purchasing public from word "Distilleries," did not own, operate, or control any place or places where such beverages are made by process of distillation as above set forth, and was not a distiller, the products of which are preferentially bought by a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and such public into the belief that it was a distiller and that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as aforesaid, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies and other said beverages, bottled and sold by it, and thereby divert trade to it from its competitors who do not, by their corporate or trade names or in any other manner, misrepresent that they are manufacturers by distillation as aforesaid of whiskies, gins, and other spirituous beverages; to the substantial injury of competition in commerce:

Complaint

23 F. T. C.

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse 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 Irish Hills Distilleries, 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 the 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 is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in the business of wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does

mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 27, 1935, issued and on June 29, 1935, served its complaint in this proceeding upon respondent, Irish Hills Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of the respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefore an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substituted answer, briefs and oral arguments of counsel having been waived, and the Commission, having duly considered the same and being now 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 is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business at 439 East Congress Street, in the city of Detroit, in said State. It is now, and for more than one year last past has been, engaged in business under a basic permit from the United States Government, which permit is designated "R-426," as a wholesaler and rectifier of distilled spirits, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilleries" when used in connection with the liquor industry and the products thereof has had, and still has, a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the

bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, or on their stationery or advertising, or on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth in paragraph 3 hereof, is calculated to, and has the capacity and tendency to, and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to, and has, the capacity and tendency to, and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors, who do not by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to competition in interstate commerce.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, Irish Hills Distilleries, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein, dated October 19, 1936, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, Irish Hills Distilleries, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of whiskies, gins, or other spirituous beverages, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Distilleries" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

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

Complaint

23 F. T. C.

IN THE MATTER OF
AFTA SOLVENTS CORPORATION

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

Docket 2594. Complaint, Oct. 23, 1935—Decision, Nov. 20, 1936

Where a corporation engaged in the manufacture and sale of a liquid cleaning fluid under the designation "Afta" or "Afta Spot Remover," for use in cleaning fabrics, automobile upholstery, rugs, etc.—

Represented, on labels and orally, as the case might be, that said preparation was a spot remover and would remove foreign matter and leave no spot or ring, and would not injure the color or the material of the fabric; facts being that, applied to cottons dyed with either of three dyes in commercial use, it caused some of the color to be dissolved and to run, and, applied to silk, caused a spot or ring to appear where thus applied;

With effect of deceiving and misleading purchasers, wholesale and retail dealers, and members of the public who use such fluids for aforesaid purposes, into believing that such representations were true, and into purchasing its said cleaning fluid instead of the preparations of competitors, in reliance upon said belief, and of thereby diverting unfairly to it trade in such fluids from its competitors; to the substantial injury of competition in commerce:

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

Before *Mr. Charles F. Diggs*, trial examiner.

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 Afta Solvents Corporation, hereinafter referred to as the 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, Afta Solvents Corporation, is a corporation organized under the name Afta Chemical Corporation, on or about April 22, 1930, under the laws of the State of New York. On February 11, 1932, the name of the respondent was changed from Afta Chemical Corporation to Afta Solvents Corporation, and at all

times since its organization the respondent had and now has a place of business in the city of New York, and it is and has been during all the times since the date of its organization, engaged in the business of the manufacture and sale of a liquid cleaning fluid under the trade or brand name "Afta" or "Afta Spot Remover," for use in the cleaning, among other things, of fabrics, auto upholstery, both fabric and leather, rugs, carpets, draperies, gloves, hats, and furs.

PAR. 2. During all the times above mentioned the respondent has caused its cleaning fluid to be sold both to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than New York or the State of origin of the shipment.

The respondent has caused its cleaning fluid, when so sold by it, to be transported from New York, or from the State of origin of the shipment, to, into, and through States other than New York, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 3. During all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the manufacture and of the sale of various liquid cleaning fluids for the same purposes of use, as set forth in paragraph 1 hereof, and they have, respectively, sold the same both to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than the State of the seller, or the State of origin of the shipment.

The sellers, respectively, have caused their cleaning fluids, when so sold by them, 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 located in said other States.

PAR. 4. The respondent during all the times above mentioned and referred to is and has been in substantial competition in interstate commerce in the sale of its cleaning fluid, above mentioned, with the other individuals, firms, and corporations, referred to as sellers in paragraph 3 hereof.

PAR. 5. During all the times above mentioned the respondent has sold or caused its product called "Afta" or "Afta Spot Remover" to be sold and transported, as set forth in paragraph 2 hereof, in containers on which the respondent caused labels to be placed, containing statements and representations to the effect, among other things, that by the use of the product, foreign matter referred to as "spots" will

be removed from fabrics or other articles and that after its use to remove such spots no "ring" is visible or appears in the place from which the foreign matter was removed; and also to the effect that the use of the product in cleaning fabrics or other articles does not injure the material of which they are made or their color.

During all said times the respondent has also caused similar statements and representations of its said cleaning fluid to be made verbally, through its officers, agents, and salesmen, and to be published in newspapers and periodicals which circulated among the public of the various States, and in circulars which it caused to be distributed among the dealers and members of the public, sellers and users of liquid cleaning materials.

PAR. 6. When used for the purpose mentioned in paragraph 1 hereof on certain fabrics, the respondent's said cleaning fluid injures the fabric and its color, and the statements and representations, mentioned and referred to in paragraph 5 hereof, made and caused by respondent to be made on the labels of its product, to the effect that, by the use of its product, "Afta" or "Afta Spot Remover," foreign matter referred to as "spots" will be removed from fabric or other articles; and, after its use to remove such spots, no "ring" is visible or appears in the place from which the foreign matter was so removed; and, that its use in cleaning fabrics or other articles does not injure the material of which they are made or their color, are and they were each and all false representations of material facts concerning its said product and the effects of its use made by respondent, its officers, agents, and salesmen, to dealers and members of the public, users of liquid cleaning fluids, and the statements and representations referred to had the capacity and tendency to deceive and mislead dealers and members of the public into believing that they were true and in reliance on such belief into purchasing respondent's cleaning fluid instead of competitors' cleaning fluids and dealers and members of the public were deceived and misled thereby into believing that they were true and into purchasing respondent's product instead of the cleaning fluids of its competitors, and trade was thereby diverted to respondent from its competitors.

PAR. 7. The above acts and things done and caused to be done by the respondent were and are 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission, on October 23, 1935, issued its complaint in this proceeding and caused it to be served upon the respondent Afta Solvents Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance and service of the complaint and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Edward E. Reardon, Esq., attorney for the Commission, before Charles F. Diggs, Esq., an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Sigmund, president of the respondent, acting on its behalf; and the testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral argument of counsel for the Commission and said Harold Sigmund; and, the Commission having duly considered the same, and being now 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, Afta Solvents Corporation, is a corporation, organized on or about April 22, 1930, under the laws of the State of New York, and at all times since its organization as a corporation, the respondent had, and now has, a place of business in the city of New York, where it is and has been engaged in the business of the manufacture and sale of a liquid cleaning fluid sold by it under the trade or brand name "Afta" or "Afta Spot Remover," for use in the cleaning of fabrics, including automobile upholstery of fabric or leather, rugs, carpets, draperies, garments, gloves, hats, and furs.

PAR. 2. During all the times above mentioned, the respondent has caused its cleaning fluid to be sold to members of the public for use, and to wholesale and retail dealers for resale to the public, purchasers thereof, located in the various States of the United States other than New York or the State of origin of the shipment, and

the respondent has caused its cleaning fluid, when so sold by it, to be transported from New York, or from the State of origin of the shipment, to, into and through States other than New York, or the State of origin of the shipment, to the purchasers located in the said other States.

PAR. 3. During all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the business of the manufacture and of the sale of various liquid cleaning fluids for the same purposes of use as the respondent's cleaning fluid, and the sellers, respectively, have sold their cleaning fluids to members of the public for use and to wholesale and retail dealers therein for resale to the public, purchasers thereof, located in the various States of the United States other than the State of the seller, or the State of origin of the shipment.

The sellers, respectively, have caused their cleaning fluids, when so sold by them to be transported to, into and through States other than the State of the sellers, or the State of origin of the shipment, to the purchasers located in said other States.

PAR. 4. The respondent during all the times above mentioned is, and has been, in substantial competition in interstate commerce in the sale of its cleaning fluid, above mentioned, with the other individuals, firms, and corporations, referred to above as sellers.

PAR. 5. During all the time above mentioned, the respondent, has caused its product, "Afta" or "Afta Spot Remover," to be sold and transported, as above set forth, in containers having labels thereon, which contained statements and representations to the effect, among other things, that by the use of the cleaning fluid, foreign matter referred to as "spot" will be removed from fabrics or other articles and that after its use for that purpose, no "spot" or "ring" will appear or be visible in the place from which the foreign matter referred to was removed; and also to the effect that the use of the cleaning fluid in cleaning fabrics or other articles does not injure the material of which they are made or their color.

During all the times since the year 1933, the respondent has also caused verbal statements that its cleaning fluid "Afta" would remove foreign matter from fabrics without injury to their color or to the material of the fabric to be made to the purchasers of the cleaning fluid.

PAR. 6. Respondent's cleaning fluid, "Afta" or "Afta Spot Remover" is a mixture that was composed prior to October 20, 1934, principally of zylene and carbontetrachloride and, when on occasion it was ap-

Conclusion

plied, as it was then composed, to cotton dyed with either of three dyes commercially used in the dyeing of fabrics, and known respectively as naphthol AS, fast blue salt B, and Victoria blue BX, or rhodamine B, it has caused some of the color or dye of the cloth in each case to be dissolved and to "run." The application of respondent's cleaning fluid to silk cloth also has caused a "spot" or "ring" to appear on the cloth at the place where the respondent's cleaning fluid was applied.

PAR. 7. The representations, caused by the respondent to appear on the labels on the containers of its "Afta" cleaning fluid, to the effect that the cleaning fluid is a "spot remover" implies to the public, purchasers of the cleaning fluid, that, when used for the purpose of removing a "spot" caused by foreign matter on fabric or the other articles above mentioned, the foreign matter will be removed and no "spot" or "ring" will thereupon appear or be visible on the said fabric or other articles at the place from which the foreign matter was removed by the application of the cleaning fluid. The representations, made or caused by the respondent to be verbally made at all times since 1933, to purchasers in the sale of its "Afta" cleaning fluid, that the cleaning fluid would remove foreign matter from fabrics and other articles without injury to their color are, and have been, false representations. All of the aforesaid representations had, and still have, the capacity and tendency to, and do, deceive and mislead purchasers, wholesale and retail dealers and members of the public, who use cleaning fluids to remove foreign matter from fabrics, or other articles, into believing that the said representations are true and into purchasing respondent's "Afta" cleaning fluid instead of the cleaning fluids of respondent's competitors in reliance upon said belief. As a result, trade in cleaning fluids was caused thereby to be unfairly diverted to the respondent from its competitors to the substantial injury of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Afta Solvents Corporation, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles F. Diggs, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Edward E. Reardon, Esq., counsel for the Commission, and by Harold Sigmund, president of the respondent, acting on its behalf, 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 ordered, That the respondent, Afta Solvents Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale and the sale and distribution of its cleaning fluid, "Afta" or "Afta Spot Remover," or any cleaning fluid of the same or substantially of the same composition, and so sold by respondent, whether sold under the name or brand "Afta" or "Afta Spot Remover," or under any other name or brand, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, or causing others to represent directly or indirectly, that said cleaning fluid will remove spots from fabrics or other articles to which it is applied for the removal of foreign matter and will leave no spot or ring visible in the place from which foreign matter has been removed by the application of the cleaning fluid, or that it will not injure the color of fabrics to which it is applied to remove foreign matter; unless and until such cleaning fluid is so made and composed that the application of it to fabrics and other articles will, in fact, remove foreign matter therefrom without causing spots or rings to appear or to be visible at the place to which it is applied, and will not cause any of the color of the fabrics, or other articles to which it is applied to be dissolved and to "run."

It is further ordered, That the said respondent, Afta Solvents Corporation, shall, within 30 days after the date of 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 and is now complying with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF
CLOPAY CORPORATION

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

Docket 2630. Complaint, Nov. 15, 1935—Decision, Nov. 20, 1936

Where a corporation engaged in the manufacture of a certain oiled cellulose pulp-backed, or paper-backed, product designated by it, usually, as "Fabray," and consisting of two types, namely, sheets of (1) cellulosic material coated on both sides with an oil coating and used for window shades, and of (2) cellulosic material coated on one side only with an oil coating and decorated with a glossy finish and used for shelf covering, wall covering and the like, and in the distribution and sale of its aforesaid product in competition with those engaged in the manufacture of an oiled cellulose pulp-backed or paper-backed product or of an oiled cloth-backed product, commonly designated as oilcloth, or of cloth window shades, and in the distribution and sale thereof among the various States and in the District of Columbia—

- (a) Represented, on labels on the containers of its said "Fabray" or in advertisements in newspapers and periodicals of general circulation and in advertising literature, that its said product, "used like oilcloth," was "usually described as the 'Fibre-backed oilcloth'," though its coated surface adheres more firmly "to the solid fibre back than to the 'cheesecloth' backing of ordinary oilcloth," with "superior resistance to chipping and flaking," and also referred, without qualification, to said "Fabray" as oilcloth, and as made from a new kind of material which looks, etc., just like oilcloth, but with "advantages oilcloth cannot have," and represented that in numerous exacting laboratory tests it "revealed wearing qualities as great or greater than ordinary oilcloth," the facts being it was not usually described as above represented and claimed and was not an oilcloth product within the accepted meaning of the term as understood by the purchasing public and the trade generally, and, notwithstanding fact it possessed wearing qualities in certain respects as great or greater than oilcloth of the cheaper and less expensive grades, did not possess such qualities in all respects as great or greater than those of the better and more expensive grades of said products last referred to;
- (b) Represented that its said "Fabray" was "Wash Proof," "Fray Proof," and "Crack Proof," and that its "Fabray" window shades were "Non-Cracking," "Non-Fading," and "Non-Fraying," the facts being that, while said product was washable, did not fray in the usual meaning of the word, or crack under conditions of ordinary usage, and said shades, under such conditions, were non-cracking and non-fraying, product nevertheless was not wash-proof, fray-proof, or crack-proof, nor were shades uniformly non-fading; and
- (c) Adopted and followed a course of action designed to compare its products unfairly with oilcloth products and cloth window shades, generally, and unfairly represented, both directly and by inference and implication, that all grades of oilcloth were subject to weaknesses true only of restricted grades of the cheaper product, and failed to specify, in making comparisons

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of its products with oilcloth and cloth window shades, respective grades thereof to which its own was being compared, or respective grades or qualities of aforesaid products that had been tested by it in comparative tests with its own, through statements, representations and comparisons in its various advertising literature which had the capacity and tendency to create in the minds of a substantial portion of the purchasing public the false and erroneous beliefs that all grades of oilcloth, when creased, would reveal a decided crack, so that bits of the surface coating could be peeled away from the backing, which consisted, in the case of all, of coarsely woven cheesecloth or woven scrim, and that the surface of all grades, upon being scraped, would separate from the backing so that large pieces could be flaked off, etc., and that the backing of all grades was flimsy, and that all would crack or peel, and laboratory tests revealed that oilcloth generally did not have as great wearing qualities as "Fabray," and that all cloth window shades were clay filled and would readily crack or pin-hole upon being creased;

Facts being that, while said "Fabray," upon being laboratory tested, compares favorably in many respects with oilcloth products of the cheaper grades commonly backed as aforesaid, and its "Fabray" window shades, thus tested, compare favorably in many respects with the cheaper grade cloth shades and particularly with those clay filled, better grades of oilcloth products will not crack or peel as aforesaid, nor are all grades made with such backings or with surfacing material which will readily flake off, etc., better grades thereof reveal wearing qualities superior to those of said "Fabray," and all grades of cloth window shades are not clay filled so as to readily crack or pin-hole upon being creased;

With result of placing in the hands of retail dealers and distributors an instrument and a means whereby they might commit a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell said "Fabray" as and for oilcloth, and with capacity and tendency to divert unfairly a substantial volume of trade from competitors who manufacture and sell oiled cloth-backed products or oilcloth as generally designated, or who manufacture and sell cloth window shades and do not in any manner misrepresent the character and quality of their products or unfairly disparage products made by corporation in question or other competitors, and with the result that substantial quantities of said "Fabray" were sold to such dealers and to the consuming public; to the injury of substantial competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. J. T. Welch for the Commission.

Wood & Wood, of Cincinnati, Ohio, 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 Clopay

Corporation, a corporation, is now, and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Clopay Corporation, is now, and has been at all times, a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business in the city of Cincinnati, in the State of Ohio, and is now, and has been for a period of more than one year, engaged in the business of manufacturing and selling to distributors and retailers for resale oiled cellulose pulp backed, or paper backed, products designated by the respondent as "Fabray," said "Fabray" products consisting of shelving, window shades, and table covers, as well as "Fabray" in rolls.

PAR. 2. The respondent, being engaged in business as hereinabove set out, causes said product known as "Fabray," when sold to distributors and retail dealers located in various cities in the several States of the United States, to be transported from its principal place of business in the State of Ohio to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said product known as "Fabray," manufactured and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships, and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution, and sale of similar oiled cellulose pulp backed or paper backed products, or of oiled cloth backed products commonly designated as oilcloth; or in the manufacture, distribution, and sale of cloth window shades.

PAR. 4. Respondent, Clopay Corporation, in the course and conduct of its business as detailed in paragraphs 1 to 3 hereof, has offered for sale, and sold, in commerce as hereinabove set out, certain of its products, to wit, "Fabray" in its various forms, such as table covers, window shades, shelving and in rolls, in packages or containers, on the outside of said packages or containers, by way of

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advertisement and inducement to purchase, there being attached a label on which is printed, together with other words, the following:

Fabray used like oilcloth. Fabray is usually described as "The Fibre-backed oilcloth." But its coated surface adheres more firmly to the solid fibre back than to the "cheesecloth" backing of ordinary oilcloth. Hence a superior resistance to chipping and flaking.

The respondent, in advertisements inserted in newspapers and magazines of general circulation throughout the several States of the United States, and in all of its other advertising literature and displays, makes use of the statements hereinabove detailed as appearing on its said labels, or statements of similar import and effect. In certain of its advertisements respondent refers to and designates its product, without qualification, as "Fabray—Fibre-backed Oilcloth," and in certain other of its advertisements and on its display racks represents that its product "looks and wears like oilcloth and has an oilcloth surface." In other advertisements respondent has represented that "Fabray has the same surface as the most expensive fabric backed wall covering" and that its product is manufactured from "a new kind of material just like oilcloth with advantages oilcloth cannot have."

Respondent has also represented in a number of advertisements that "in numerous exacting laboratory tests, Fabray revealed wearing qualities as great or greater than ordinary oilcloth" and that the product is "Wash Proof," "Fray Proof," and "Crack Proof."

Respondent manufactures and sells, in commerce as hereinabove detailed, window shades made from the product designated by it as "Fabray," the material used in manufacturing said window shades being the same as the other "Fabray" material except that both surfaces, instead of only one, are oiled. In advertising its "Fabray" window shades and in displaying said window shades for sale to the public, respondent represents that they are "Non Cracking," "Non Fading," and "Non Fraying."

PAR. 5. In truth and in fact, the product manufactured and sold by the respondent and designated as "Fabray" is not usually described as "The Fibre-backed Oilcloth" and is not an oilcloth product within the accepted meaning of the term "oilcloth" as understood by the purchasing public and the trade generally so as to warrant the respondent's description of it as "Fabray—Fibre-backed Oilcloth." "Fabray" does not wear like oilcloth and does not have the same surface as the most expensive fabric backed wall covering, nor does "Fabray" have advantages or qualities not possessed by oilcloth. Numerous exacting laboratory tests do not reveal that "Fabray" possesses wearing qualities as great or greater than oilcloth, but reveal

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that "Fabray" does not possess wearing qualities as great as oilcloth of the better and more expensive grades. It is not "Wash Proof," "Fray Proof," and "Crack Proof." The window shades manufactured and sold by the respondent from the product designated as "Fabray" are not "Non Cracking," "Non Fading," and "Non Fraying." In truth and in fact, said window shades will crack, will fade and, while not fraying, because they have no cloth backing, are readily subject to tearing.

PAR. 6. Respondent, in the course and operation of its business, and for the purpose of inducing the purchase of its products, has adopted and followed, and now follows, a course of action designed to, and having the effect of, unfairly comparing its product to oilcloth products generally, and to cloth window shades generally, and of unfairly disparaging said products generally.

In certain of its advertising literature distributed to prospective retail dealers and distributors for the purpose of inducing said dealers and distributors to purchase its products for resale to the consuming public, respondent has made the following statements and representations:

Here's a comparison anyone can make. Take a piece of Fabray and crease it down as hard as possible with your fingernail. No matter how hard you crease it, there will be no crack. Do the same thing with oilcloth, however, and a decided crack will show up after which bits of the surface coating can be peeled away from the coarsely woven cheesecloth backing.

Here's another way you can definitely establish the superiority of Fabray to your own satisfaction. With a knife or your fingernail scrape the oilcloth coating. You can, of course, scrape through the top coating but you cannot possibly make it separate from its solid fibre backing. Do the same thing to oilcloth, and you can easily flake off large pieces of the surfacing material.

Here's the most amazing test of all. Take a piece of Fabray between your hands, as illustrated above, and rub it as you would a soiled handkerchief in washing it. No matter how hard you rub, you will find it very difficult to separate Fabray's smooth, tough surface from the backing. Treat oilcloth the same way and you will soon have only the flimsy scrim-like back in your hands.

In various of its advertisements respondent describes its product in the following language. "Looks, feels, wears, like finest oilcloth," and represents that said product can be used longer than the best oilcloth because it never cracks or peels.

In a number of its advertisements appearing in newspapers and magazines of general circulation throughout the several States of the

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United States, and in its advertising displays and other advertising literature, the respondent has made, and continues to make, unfair comparisons of the quality of "Fabray" with oilcloth, and in these comparisons refers to the "cheesecloth" backing of "ordinary oilcloth" and to the "open meshes of coarsely woven scrim" used in "ordinary oilcloth." In making said comparisons the respondent further represents that "In numerous exacting laboratory tests Fabray revealed wearing qualities as great or greater than ordinary oilcloth" and that it has a superior resistance to chipping and flaking.

In other advertisements the respondent uses an illustration wherein the prospective purchaser says, "Why, this is marvelous. It looks and feels like the best grade oilcloth," and the salesman responds, "Wears like it, too, Madam, but Fabray will not crack or peel like oilcloth." In other advertisements respondent makes use of the statement: "And not only that, Fabray does not crack or peel. It has an oilcloth surface, but a solid backing of tough fibre instead of coarsely woven cheesecloth. You can crease it, crumple it, or even scrape it, and still Fabray will not separate from its backing or show even the slightest crack."

In other advertisements respondent uses an illustration wherein the following statement appears:

Yes, Clopay shades save me plenty—but Fabray saves me even more on all oilcloth needs. Here's a real saving. Fabray wears fully as well as oilcloth but does not crack or peel. Costs one-third to one-half less. I thought Clopay shades were the last word in economy until I found Fabray. It is marvelous. It looks, feels and wears like the best oilcloth. Yet I can use it longer because it never cracks or peels. Best of all, I can afford to use Fabray many more ways than I ever did oilcloth because it costs one-third to one-half less. Fabray is a new and entirely revolutionary product made on tough solid fibre instead of on cheesecloth backing.

In other advertisements the respondent makes the following comparison of its product with oilcloth products:

Imagine getting 2½ yards of the finest inch shelf oilcloth for only ten cents. Impossible, of course. But, in Fabray, usually called fibre-backed oilcloth—you get every advantage of oilcloth and more—2½ yard rolls, only a dime a roll. You can fold it—crease it—wash it indefinitely but it will not crack or peel.

In advertising "Fabray" as used for shelving purposes, respondent uses the following language:

Now, for the first time they have a shelving that has all the advantages of the best oilcloth but can be creased down over the edges of shelves without cracking, that can be washed time after time without checking and peeling, that won't curl up at the corners, that never gets faded or dingy looking.

In its advertising of "Fabray" window shades, the respondent recommends, as a test for the product, the creasing of the shade

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sharply between the fingers and then smoothing it out. In connection with this test respondent represents, "A faint line may appear but there will be no crack or pinhole such as would immediately appear in ordinary clay filled cloth shades."

PAR. 7. All the statements and representations and comparisons hereinabove set out in paragraph 6, as made by the respondent in its various advertising literature, have falsely represented, directly, as well as by inference and implication, among other things: (1) that all grades of oilcloth, when creased, will reveal a decided crack and that bits of the surfaced coating can be peeled away from the backing; (2) that the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim; (3) that the surfacing of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off; (4) that the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it; (5) that all grades of oilcloth have flimsy scrim-like backing; (6) that, in laboratory tests conducted, oilcloth does not reveal wearing qualities as great as "Fabray," the respondent's product; (7) that all grades of oilcloth will crack or peel; and (8) that cloth window shades are clay filled and readily crack or "pinhole" upon being creased, and have represented that respondent's product does not possess any of the defects or weaknesses hereinabove enumerated and attributed to oilcloth products and cloth window shades generally by the respondent in its advertising literature.

In truth and in fact, all grades of oilcloth will not crack or peel so that bits of the surfacing material can be peeled away from the backing. All grades of oilcloth are not made with a backing of coarsely woven cheesecloth or coarsely woven scrim so that the surfacing material thereof will flake off in large pieces or will be separated from said backing by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it, but have a backing of cotton sheeting superior to cheesecloth. All grades of oilcloth do not have flimsy scrim-like backing and all grades do not, upon being laboratory tested, reveal wearing qualities inferior to those of "Fabray," the respondent's product. Further, all cloth window shades are not clay filled so that they will readily crack or "pinhole" upon being creased, and many grades of said cloth window shades will not crack or "pinhole" when given treatment similar to treatment given respondent's products.

The respondent, through the statements and representations hereinabove set out, has falsely represented, directly, as well as by inference and implication, that all grades of oilcloth are subject to the weaknesses

true only of a restricted grade of cheap oilcloth, if true at all, and, in making comparisons of its product with oilcloth products, and with cloth window shade products, has not specified the respective grades of said products to which its products are being compared or the respective grades or qualities of said products that have been tested by the respondent in comparison tests with its products.

PAR. 8. The word "oilcloth," when used in connection with, or descriptive of, a material covering various surfaces means, and the trade and consuming public understand, and for many years have understood, it to mean that the surfacing material so being referred to or described is manufactured from cotton sheeting to which has been applied, on either one or both surfaces, a number of layers of paint composed of treated oils and pigments and finished with decorated designs printed thereon.

PAR. 9. The false and misleading advertising and representations hereinabove set out, on the part of the respondent, place in the hands of said retail dealers and distributors an instrument and a means whereby said dealers and distributors may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, offer for sale and sell the said product designated as "Fabray" as and for an oilcloth product.

There are many among competitors of the respondent who manufacture and sell similar fibre backed, or paper backed, products having an oiled surface similar to that on the respondent's product known as "Fabray" and who rightfully and truthfully advertise the qualities possessed by said products and in no manner misrepresent said products or their quality or unfairly disparage the products of other competitors, including the respondent. There are also among the competitors of the respondent many who manufacture and sell oiled cloth back products, generally designated as oilcloth, or who manufacture and sell cloth window shades, who do not, in any manner whatever, misrepresent the character and quality of the products manufactured by them and who do not in any way unfairly disparage the products manufactured by their competitors, including the respondent.

PAR. 10. The effect of the foregoing false and misleading advertisements and representations on the part of the respondent is to mislead a substantial number of retail merchants and dealers, as well as a substantial portion of the consuming public in the several States, by inducing them to believe that the representations as to the quality, character and nature of respondent's products are true and that respondent's statements and representations with reference to the oilcloth products of its competitors and the cloth window shade products

of other of its competitors are true, and to purchase substantial quantities of respondent's products in said beliefs.

The foregoing false and misleading statements and representations on the part of the respondent, including the various disparagements of competitors' products as set out in paragraph 6, have a tendency and a capacity to and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses to the respondent, with the result that substantial quantities of said product known as "Fabray" are sold to said dealers and purchasers, and to the consuming public, on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 11. The acts and practices of respondent above set forth are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress 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 15th of November 1935 issued and served its complaint in this proceeding upon said respondent, Clopay Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 6, 1935, the respondent filed its answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Edmund P. Wood, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said

complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Clopay Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located in the city of Cincinnati, State of Ohio. For a period of more than one year, it has been engaged in the manufacture, distribution and sale of a certain oiled cellulose pulp-backed, or paper-backed, product to distributors and retailers for resale. This pulp-backed product is generally designated by the respondent as "Fabray" and is of two types. One type is comprised of a sheet of cellulosic material coated on both sides with an oil coating. This type of "Fabray" is used for window shades. The other type is comprised of a sheet of cellulosic material coated on one side only with an oil coating and decorated with a glossy finish. This type is used for shelf covering, wall covering and the like.

PAR. 2. The respondent causes said "Fabray" product, when sold to distributors and retail dealers, to be transported from its principal place of business in the city of Cincinnati, State of Ohio, to the respective purchasers thereof located in the District of Columbia and in States of the United States other than the State of Ohio. It has maintained, for a period of more than one year last past, a constant current of trade in its "Fabray" product, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other corporations, and with firms and individuals likewise engaged in the manufacture of an oiled cellulose pulp-backed, or paper-backed, product or an oiled cloth-backed product (commonly designated as oilcloth), or of cloth window shades, and in the distribution and sale of said products, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of its business, has offered for sale, and sold, in commerce as hereinabove set out, its "Fabray" product in packages or containers. On the outside of said

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packages or containers, by way of advertisement and inducement to purchase, there was attached a label, reading substantially as follows:

Fabray used like oilcloth. Fabray is usually described as "The Fibre-backed oilcloth." But its coated surface adheres more firmly to the solid fibre back than to the "cheesecloth" backing of ordinary oilcloth. Hence a superior resistance to chipping and flaking.

In advertisements inserted in newspapers and magazines of general circulation throughout the various States of the United States and in its other advertising literature and displays, the respondent makes use of the same statement and representation appearing on its labels, or statements and representations of similar import and effect. In certain of its advertisements, respondent referred and designated its "Fabray" product, without qualification, as "Fabray—Fibre-backed oilcloth." In certain other of its advertisements and on its display racks, respondent represented that said product "looks and wears like oilcloth and has an oilcloth surface." In other advertisements, it has represented that "Fabray has the same surface as the most expensive fabric-backed wall covering," and that said product is manufactured from "a new kind of material which looks, wears and feels just like oilcloth with advantages oilcloth cannot have."

Respondent has also represented in a number of advertisements that "In numerous exacting laboratory tests, Fabray revealed wearing qualities as great or greater than ordinary oilcloth," and that the product is "Wash Proof," "Fray Proof" and "Crack Proof." In advertising its Fabray window shades, and in displaying said window shades for sale to the public, respondent represented that they were "Non-Cracking," "Non-Fading," and "Non-Fraying."

PAR. 5. In truth and in fact, the product manufactured and sold by the respondent and designated as "Fabray" is not usually described as "Fibre-backed oilcloth" and is not an oilcloth product within the accepted meaning of the term "oilcloth" as understood by the purchasing public and the trade generally. Numerous exacting laboratory tests reveal that "Fabray" does not possess wearing qualities in all respects as great or greater than oilcloth of the better and more expensive grades, but does possess wearing qualities in certain respects as great or greater than oilcloth of the cheaper and less expensive grades. It is not "Wash Proof," "Fray Proof," and "Crack Proof," but is washable, does not fray in the usual meaning of the word because of its paper backing, and does not crack under conditions of ordinary usage. The window shades manufactured from the product designated as "Fabray" are not uniformly "Non-Fading," but they are "Non-Cracking" under ordinary conditions of use, and are "Non-Fraying." Inasmuch as the window shade is

manufactured from paper, and no filler is employed, the product does not develop cracks or pinholes by virtue of the filler falling out, nor does it fray, although, due to the nature of the material, it tears more easily than cloth, particularly at the margins.

PAR. 6. Respondent, in the course and operation of its business, and for the purpose of inducing the purchase of its products, has adopted and followed a course of action designed to unfairly compare its product to oilcloth products generally, and to cloth window shades generally.

In certain of its advertising literature distributed to prospective retail dealers and distributors for the purpose of inducing said dealers and distributors to purchase its product for resale to the consuming public, respondent has suggested certain comparative tests between its product and oilcloth products. The advertisements suggesting the nature of said tests read as follows:

Here's a comparison anyone can make. Take a piece of Fabray and crease it down as hard as possible with your fingernail. No matter how hard you crease it, there will be no crack. Do the same thing with oilcloth, however, and a decided crack will show up after which bits of the surface coating can be peeled away from the coarsely woven cheesecloth backing.

Here's another way you can definitely establish the superiority of Fabray to your own satisfaction. With a knife or your fingernail scrape the oilcloth coating. You can, of course, scrape through the top coating but you cannot possibly make it separate from its solid fibre backing. Do the same thing to oilcloth, and you can easily flake off large pieces of the surfacing material.

Here's the most amazing test of all. Take a piece of Fabray between your hands, as illustrated above, and rub it as you would a soiled handkerchief in washing it. No matter how hard you rub, you will find it very difficult to separate Fabray's smooth, tough surface from the backing. Treat oilcloth the same way and you will soon have only the flimsy scrim-like back in your hands.

In various of its advertisements, respondent describes its product in the following language: "Looks, feels, wears like finest oilcloth," and represents that said product can be used longer than the best oilcloth because it never cracks or peels. In a number of its advertisements appearing in newspapers and magazines of general circulation throughout the various States of the United States, and in its advertising displays and other advertising literature, respondent has made comparisons of the quality of "Fabray" with oilcloth generally, and in these comparisons refers to the "cheesecloth" backing of "ordinary oilcloth," and to the "open meshes of coarsely woven scrims" used in ordinary oilcloth.

In its advertising of Fabray window shades, respondent recommends a certain creasing test for the product, and represents that as a result of the test "A faint line may appear. There will be no cracks or pinholes, such as would immediately appear in ordinary clay filled cloth shades."

PAR. 7. The statements, representations and comparisons made use of by the respondent in its various advertising literature have the capacity and tendency to create in the minds of a substantial portion of the purchasing public, the false and erroneous beliefs: (1) that all grades of oilcloth, when creased, will reveal a decided crack and that bits of the surface coating can be peeled away from the backing; (2) that the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim; (3) that the surfaces of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off; (4) that the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it; (5) that all grades of oilcloth have flimsy scrim-like backing; (6) that laboratory tests reveal that oilcloth generally does not have wearing qualities as great as Fabray; (7) that all grades of oilcloth will crack or peel; and (8) that all cloth window shades are clay filled and readily crack or "pinhole" upon being creased.

In truth and in fact the better grades of oilcloth products will not crack or peel so that bits of the surfacing material can be peeled away from the backing. All grades of oilcloth are not made with a backing of coarsely woven cheesecloth, or coarsely woven scrim. The surfacing material of those grades of oilcloth that do not have a backing of coarsely woven cheesecloth, or coarsely woven scrim, will not readily flake off in large pieces, or readily become separated from said backing. Said better grades of oilcloth do reveal wearing qualities superior to those of "Fabray." On the other hand, "Fabray," upon being laboratory tested, compares favorably in many respects with oilcloth products of the cheaper grades commonly backed with cheesecloth or coarsely woven scrim. Likewise, "Fabray" window shades, upon being laboratory tested, compare favorably in many respects with cheaper grade cloth window shades, and particularly with clay filled cloth window shades. All grades of cloth window shades are not clay filled so that they will readily crack or pinhole upon being creased. Many grades of said cloth window shades will not crack or "pinhole" when given treatment similar to treatment given to "Fabray."

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The respondent, in statements and representations hereinabove set out, has unfairly represented directly, as well as by inference and implication, that all grades of oilcloth are subject to the weaknesses true only of restricted grades of cheap oilcloth, and in making comparisons of its product with oilcloth products and with cloth window shade products, has not specified the respective grades of said products to which its product is being compared, or the respective grades or qualities of said products that have been tested by the respondent in comparative tests with its product.

PAR. 8. The word "oilcloth," when used in connection with, or descriptive of, a material covering various surfaces, means, and the trade and consuming public understand, and for many years have understood it to mean, that the surfacing material so being referred to or described is manufactured from either cotton sheeting, or cheese-cloth, or the like, to which has been applied, on either one or both surfaces, a number of layers of paint composed of treated oils and pigments and finished with decorated designs printed thereon.

PAR. 9. The statements, representations, and advertisements used by the respondent in the sale of its product, place in the hands of said retail dealers and distributors an instrument and a means whereby said dealers and distributors may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, offer for sale, and sell "Fabray" as and for oilcloth.

There are many among the competitors of the respondent who manufacture and sell oiled cloth backed products, generally designated as oilcloth, or who manufacture and sell cloth window shades, who do not in any manner whatever misrepresent the character and quality of the products manufactured by them, and who do not in any manner unfairly disparage products manufactured by their competitors, including the respondent.

PAR. 10. The unfair and misleading statements and representations on the part of the respondent, including the various unfair disparagements of certain classes of competitors' products, as set out, have a capacity and tendency to unfairly divert a substantial volume of trade from the competitors of the respondent referred to in paragraph 9 hereof. As a result substantial quantities of said product known as "Fabray" are sold to said dealers and purchasers, and to the consuming public, and as a consequence thereof, injury has been done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Clopay Corporation, 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, 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 agreed stipulation of facts entered into between the respondent herein, Clopay Corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Clopay Corporation, and its officers, representatives, agents and employees, in connection with the advertising, offering for sale, and sale and distribution of its oiled cellulose pulp-backed, or paper-backed, products of various types generally designated as "Fabray," in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

A. Representing, directly or by inference, through advertising booklets, advertisements inserted in newspapers and magazines, pamphlets, folders, stickers, or any other advertising literature, or on containers for its product, or in any other manner whatever:

1. That Fabray is an oilcloth product or fibre-backed oilcloth product;
2. That Fabray is generally described as an oilcloth product or a fibre-backed oilcloth product;
3. That Fabray possesses wearing qualities as great as the more expensive grades of oilcloth;
4. That Fabray is Wash Proof, Fray Proof, and Crack Proof;
5. That Fabray window shades are non-fading, when such is not the fact;

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6. That all grades of oilcloth, when creased, will reveal a decided crack.

7. That bits of the surface coating of all grades of oilcloth can be peeled away from the backing;

8. That the backing of all grades of oilcloth consists of coarsely woven cheesecloth or coarsely woven scrim;

9. That the surfaces of all grades of oilcloth, upon being scraped with a sharp object, will separate from its backing to such an extent that large pieces of said surfacing material can be flaked off;

10. That the surfacing material of all grades of oilcloth can be separated from the backing thereof by rubbing the oilcloth as a soiled handkerchief would be rubbed in washing it;

11. That all grades of oilcloth have flimsy scrim-like backing;

12. That laboratory tests reveal that oilcloth generally does not have wearing qualities as great as Fabray;

13. That all grades of oilcloth will crack or peel;

14. That all cloth window shades are clay filled and readily crack or "pinhole" upon being creased;

15. That all grades of oilcloth, and all grades of cloth window shades, are subject to the weaknesses true only of restricted grades of cheap oilcloth, or of cheap cloth window shades;

16. That comparative tests made by the respondent, or by others, reveal results favorable to Fabray, without also stating the restricted grades or qualities of the products that were actually tested in comparison with respondent's product Fabray;

17. That various grades and qualities of oilcloth have certain weaknesses without specifying the grades and qualities of oilcloth to which said statements refer.

B. Using the word "ordinary" in conjunction or connection with the word "oilcloth" or the words "clay filled window shades" to describe or refer to various grades or qualities of oilcloth, or cloth window shades, without specifying the grades and qualities of oilcloth, or cloth window shades, actually being described or referred to.

It is further ordered, That the 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

P. A. LEFEBVRE & COMPANY, LIMITED, AND ZATIQUE
LACOMB

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

Docket 2933. Complaint, Sept. 30, 1936—Decision, Nov. 20, 1936

Where a corporation and an individual engaged in the manufacture, sale and distribution of a product named "Magic Gas," for mixing with gasoline or kerosene for use in internal combustion engines; in advertising the same in pamphlets, and through labels attached to the containers thereof, and in newspapers, periodicals, radio broadcasts, testimonials, placards, and otherwise—

Falsely represented that said product, thus mixed and used in the engines of motor vehicles, increased mileage and prevented or removed and eliminated carbon and carbon troubles and improved starting, pickup, and power and performance, and increased economy and the life of the motor, and equalled gasoline at three cents a gallon, and solved the gasoline problem;

With capacity and tendency to mislead and deceive purchasers of their said product into believing that when buying the same from them they were obtaining one that would, when used by them, increase the efficiency of a motor vehicle, and that they were thereby gaining an advantage in the purchase of said product, and with effect of unfairly diverting trade to them from many competitors who make and distribute products that increase the efficiency of such vehicles and sell and distribute products designated for similar usage to that sold and distributed by them and do not misrepresent the capacities or effects thereof; to their substantial injury and prejudice:

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

Mr. T. H. Kennedy 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 P. A. Lefebvre & Company, Limited, a corporation, and Zatique Lacombe, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. The respondent P. A. Lefebvre & Company, Limited, is a corporation existing and doing business under and by virtue of the laws of the Dominion of Canada, having its principal place of

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business at Alexandria, Ontario, Canada, and its manufacturing establishment and place of business for business transacted within the United States at Malone, N. Y. Respondent Zatique Lacombe is an individual and at all times herein referred to has been and now is residing and maintaining his place of business at Malone, N. Y. Respondents, and each of them, during the five years last past have been engaged in the manufacture for sale and the sale of a product sold by the respondents under the trade name "Magic Gas" in commerce between and among the various States of the United States and the District of Columbia, and respondents and each of them causes and has caused said product, when sold by them to be transported in interstate commerce from their places of business in the State of New York and from other States of the United States and from the Dominion of Canada to purchasers thereof located in various States of the United States other than the State of origin of the shipment or the Dominion of Canada and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents and each of them are now, and they have been for more than five years last past, engaged in substantial competition with corporations, individuals, partnerships, and firms engaged in the manufacture for sale, sale, and distribution in commerce between and among the various States of the United States, with foreign countries and in the District of Columbia, of products used for purposes similar to the purposes for which respondents' "Magic Gas" is represented by respondents to be efficacious, and said competitors in interstate and foreign commerce have truthfully represented and now truthfully represent the properties, capacities and effects of their said products.

PAR. 3. In the course and conduct of their said business as hereinabove described, respondents and each of them, in soliciting the sale of and selling in interstate and foreign commerce "Magic Gas," in advertising said products by pamphlets, labels attached to containers of the product, advertisements inserted in newspapers, periodicals and magazines, radio broadcasts, testimonials, placards, and otherwise, have made extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of their said product, among which are the following:

That "Magic Gas" when mixed with gasoline or kerosene and used in internal combustion engines in motor vehicles:

- (a) Increases the mileage of the motor vehicle;
- (b) Prevents, removes or eliminates from the motor, carbon, carbon knocks, and carbon troubles;
- (c) Makes cars start and pick up easier or quicker and run better or smoother;
- (d) Saves gasoline and oil, gives the engine more power; perfects ignition and lubrication and lessens odor and smoke;

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- (e) Will add to the life of the motor; increases the power of the motor;
- (f) Equals gasoline at 3¢ a gallon;
- (g) Solves gasoline problem.

PAR. 4. In truth and in fact, respondents' representations and each of them as set forth in paragraph 3 hereof and respondents' advertisements and representations in pamphlets, labels attached to containers of the product, newspapers, periodicals, magazines, radio broadcasts, testimonials, placards, and otherwise, are extravagant, deceptive, misleading, and false in the following respects:

Respondents' product "Magic Gas" when mixed with gasoline or kerosene and used in internal combustion engines in motor vehicles will not: increase the mileage of the motor vehicles; prevent, remove, or eliminate from the motor carbon, carbon knocks, or carbon troubles; make cars start and pick up easier or quicker or run better or smoother; save gasoline or oil; give engine more power; and perfect ignition and lubrication, or lessen odor or smoke; add to the life of the motor; increase the power of the motor; result to the user in an equivalent of the cost of gasoline at the rate of 3¢ a gallon or any appreciable saving; or solve the gasoline problem.

PAR. 5. Respondents' advertising and representations hereinabove described have had and still have the tendency and capacity to mislead and deceive the purchasing public regarding the value, efficacy and effect of "Magic Gas," and further, as a direct consequence of the deceptive acts and representations of the respondents and the erroneous and mistaken beliefs induced by said acts as herein set out the purchasing public has purchased respondents' "Magic Gas" with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties, capacities, or effects of their respective products and the results that may be expected to be obtained from the use thereof. As a result thereof, injury has been and is now being done by the respondents and each of them to competition in commerce between and among the various States of the United States, in the District of Columbia and in foreign commerce.

PAR. 6. The acts, practices and representations of the respondents and each of them hereinabove set forth have been and are to the injury and prejudice of the public and of the competitors of the respondents in interstate and foreign commerce, and have constituted and now 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 September 30, 1936, issued, and on October 5, 1936, served its complaint in this proceeding upon respondents, P. A. Lefebvre & Company, Limited, a corporation, and Zatique Lacombe, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondents filed in the office of the Commission, and answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, and the Commission having duly considered the same and being now 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. Since in or about 1931, the respondent, P. A. Lefebvre & Company, Limited, a corporation, has been organized and exists as a corporation under the laws of the Dominion of Canada and has maintained during all of said time and now maintains its principal place of business in the Dominion of Canada at Alexandria, Ontario, Canada, and has maintained at all times herein referred to and now maintains its principal place of business for business conducted within the United States, at Malone, N. Y. During all of said time the respondent, Zatique Lacombe, an individual, has maintained and now maintains his principal place of business at Malone, N. Y.

PAR. 2. Since said 1931, respondents and each of them have been engaged in the manufacture for sale and sale and distribution of a product sold by the respondents under the trade name of "Magic Gas." The respondents and each of them have sold this product to various firms, persons, associations, or corporations located not only in the State of New York, but in other States of the United States, and after sales have been consummated, the respondents and each of them have shipped the purchased goods or caused them to be shipped from the place of business of the respondents in Malone, N. Y., or from the place of business of P. A. Lefebvre & Company,

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a corporation at Alexandria, Ontario, Canada, or from States in the United States other than the State of New York, to purchasers thereof located in States other than the State of New York or than the State of origin of the shipment.

PAR. 3. Respondents, and each of them, during all the time herein referred to, have represented that the said product "Magic Gas" is to be mixed with gasoline or kerosene for use in internal combustion engines in motor vehicles and that when so used, results will be achieved as hereinafter more fully set forth, which will be greatly beneficial to the users thereof.

PAR. 4. During all of the time that respondents have been engaged in the foregoing business there have been other firms, associations, partnerships, or corporations engaged in similar business to that of the respondents, to wit: the sale and distribution of products which will benefit the users thereof in increasing the efficiency of the operation of motor vehicles and said other firms, associations, partnerships, or corporations have been engaged in interstate commerce in said business. The respondents, during all of the aforesaid time, were and still are in competition in commerce in the sale of said "Magic Gas" with other individuals, firms, and corporations likewise engaged in the sale and distribution of products having an efficacy similar to that claimed by the respondents for "Magic Gas."

PAR. 5. In soliciting the sale of their product, respondents have continuously, during all the aforesaid time, represented in advertising said product by pamphlets, labels attached to containers of the product, advertisements inserted in newspapers, periodicals and magazines, radio broadcasts, testimonials, placards, and otherwise that "Magic Gas" when mixed with gasoline or kerosene and used in internal combustion engines in motor vehicles, increases the mileage of the motor vehicle, prevents, removes, or eliminates from the motor, carbon, carbon knocks, and carbon troubles, makes cars start and pick up easier or quicker and run better or smoother, saves gasoline and oil, gives the engine more power, perfects ignition and lubrication, lessens odor and smoke, adds to the life of the motor, increases the power of the motor, equals gasoline at 3¢ a gallon, and solves the gasoline problem. These representations have been made through advertising mediums and otherwise and caused by the respondents to be circulated in interstate commerce to their customers and prospective customers.

PAR. 6. As a matter of fact, respondent's said product, "Magic Gas," when mixed with gasoline or kerosene and used in internal combustion engines and motor vehicles, will not increase the mileage

of the motor vehicles. Its use will not prevent, remove or eliminate from the motor, carbon, carbon knocks or carbon troubles. Its use will not make cars start and pick up easier or quicker, or run better or smoother and will not save gasoline or oil. It does not give the engine more power, perfect ignition and lubrication and lessen odor or smoke. Its use does not add to the life of the motor, increase the power of the motor or result to the user in an equivalent of the cost of gasoline at the rate of 3¢ a gallon or any appreciable saving, or solve the gasoline problem.

PAR. 7. There is a preference among purchasers or prospective purchasers of respondents' products, located in various States of the United States, for a product that will improve the efficiency of motor vehicles and each and every representation by the respondents with regard to "Magic Gas," describes a product that purchasers or prospective purchasers of respondents' product desire. The representations made by the respondents above referred to have the capacity and tendency to mislead and deceive the purchasers of respondents' product into believing that when purchasing said product from respondents, they will obtain a product that will, when used by them, increase the efficiency of a motor vehicle, and that such purchasers are thereby gaining an advantage by purchasing respondents' product.

PAR. 8. The representations of respondents as aforesaid, have had and do have the tendency and capacity to mislead and deceive a substantial number of the purchasers of respondents' product.

PAR. 9. There are many competitors of respondents who manufacture and distribute products that increase the efficiency of motor vehicles and who sell and distribute products designated for similar usage to that sold and distributed by the respondents in various States of the United States, who do not misrepresent the capacities or effects of their products.

PAR. 10. Respondents' acts and practices as hereinabove set forth tend to and do unfairly divert trade to respondents from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, P. A. Lefebvre & Company, Limited, a corporation, and Zatique Lacombe, are to be 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on November 5, 1936, by respondents, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondent P. A. Lefebvre & Company, Limited, a corporation, its officers, representatives, agents and employees, and Zatique Lacombe, an individual, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate or foreign commerce or in the District of Columbia of a product designated "Magic Gas," or a product of the same or substantially the same composition as the product designated "Magic Gas," do forthwith cease and desist from representing, directly or indirectly, that said product, when mixed with gasoline or kerosene and used in internal combustion engines and motor vehicles, will:

- (a) Increase the mileage of the motor vehicle;
- (b) Prevent, remove or eliminate from the motor carbon, carbon knocks and carbon troubles;
- (c) Make cars start and pick up easier and quicker and run better or smoother;
- (d) Save gasoline and oil, give the engine more power; perfect ignition and lubrication and lessen odor and smoke;
- (e) Add to the life of the motor; increase the power of the motor;
- (f) Equal gasoline at 3¢ a gallon;
- (g) Solve the gasoline problem.

It is further ordered, That the respondents and each of them shall, within 60 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 this order.

IN THE MATTER OF
PASQUALE MARGARELLA

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

Docket 1790. Complaint, May 19, 1936¹—Decision, Nov. 27, 1936

Where an individual engaged in manufacturing candies, including assortments of penny pieces of uniform size and shape in which the chance selection of one of a small number of said pieces, the colored centers of which differed from those of the majority, entitled purchaser to one of the larger pieces included with such assortment without further charge, and in which purchaser of last of said penny pieces in assortment was given, free, a box of candy also included therewith—

Sold said assortments, in competition with many unwilling to offer or sell candies so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy, as long expressed in the common law and criminal statutes, and to established public policy of the United States Government, to wholesalers and jobbers for resale to retailers by whom said assortments were exposed for sale and sold to the purchasing public in accordance with aforesaid sales plan;

With result that many dealers in, and ultimate purchasers of, candy, attracted by said method and manner of packing said product and by element of chance involved in the sale thereof as above set forth, were thereby induced to purchase his said candy, thus packed and sold, in preference to that of competitors who do not use same or equivalent methods, and were thereby supplied with the means of conducting lotteries in the sale of his product, in accordance with aforesaid sales plan and contrary to public policy, and with capacity and tendency to induce as aforesaid, and to divert to him, by reason of said game of chance, trade and custom from his said competitors who do not use same or an equivalent method, to exclude from said candy trade all competitors who are unwilling to and who do not use such method as unlawful, lessen competition therein, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent method, and tend to create a monopoly of said trade in him and such other distributors of candy as use such a method, and deprive the purchasing public of the benefits of free competition in trade in question:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

¹ Amended and supplemental complaint. Original findings and order in this matter, which issued on April 3, 1934 (18 F. T. C. 278), were vacated, etc., by order reopening case on May 19, 1936 (22 F. T. C. 912).

Complaint

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to-wit on April 29, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and

Whereas, this Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Pasquale Margarella has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent has his principal office and place of business located at 477 Broome Street, in New York City, State of New York. He is now and for several 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 his principal place of business in New York City, N. Y., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the manufacture of candy 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers 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.

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box 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 majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from 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 of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortments, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment for sale and sell said candy 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 his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 of any other method that is contrary to public policy.

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.

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 April 29, 1930, issued and served its

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complaint in this proceeding upon the respondent, Pasquale Margarella, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on May 19, 1936, the Commission issued and served its amended and supplemental complaint on the respondent, charging him with the use of unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint on April 29, 1930, as aforesaid. On June 24, 1936, the respondent filed his answer dated June 22, 1936, in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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 has his principal office and place of business located at 477 Broome Street, in New York City, State of New York. He is now, and for several 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 his principal place of business in New York City, N. Y., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with corporations and partnerships engaged in the manufacture of candy 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers 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.

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box 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 majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from 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 of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment for sale and sell said candy 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 his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to

exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy as described in paragraph 2 hereof are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Pasquale Margarella, 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, approved September 26, 1914, entitled "An Act to create a Federal

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Trade Commission, to define its powers and duties, and for other purposes.”

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Pasquale Margarella, his representatives, agents, and employees, in the offering for sale, 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 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 packages or assortments of candy which are used or may be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with a number of larger pieces of candy and a box of candy, which said larger pieces of candy and box of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

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

IN THE MATTER OF
SPRINGFIELD METALLIC CASKET COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2326. Complaint, Mar. 12, 1935—Decision, Nov. 27, 1936

Where a corporation engaged in the manufacture of metal caskets and burial vaults, designated as air sealed and mechanically sealed end closing vaults, and in the sale of said products to jobbers and funeral directors and undertakers—

- (a) Represented, in purported certificates of warranty or guarantee, and in periodicals of wide interstate circulation, and in booklets, circulars, etc., and through photographs, testimonials, and other advertising media, that the metals of which its said vaults were made withstood the ravages of time and resisted rust and corrosion, and that said vaults were and would remain waterproof and airtight, when placed underground, for fifty years;
- (b) Made use of certificates of warranty or guarantee in connection with the sale and offer of its said vaults which guaranteed the same to be airtight, vermin and waterproof, when used for burial purposes, and undertook therein to replace any vault without cost in the event of damage to the contents by water or other elements as a result of rust, corrosion, etc.; and
- (c) Published, in connection with the sale of its said vaults, pictures, drawings, and photographs of cement vaults which had been disinterred in badly disintegrated condition, together with comment calling attention thereto;

The facts being that while its said vaults were made with great care by skilled workmen, of a highly refined grade of steel, by its very nature impervious and impenetrable by air, moisture, and water, such metal was not rust or corrosion resistant to the extent that it would never rust or corrode after burial, and, once rusted or corroded to a certain extent during a period of years, said vaults would crumble and corrode, and, in some instances, cave in and collapse, corrosive qualities, present in all soils, vary greatly, so that, while in many sections throughout the United States in which soil corrosion is not a problem, a twelve gauge metal vault, buried, would resist penetration by corrosion for more than 100 years, in other soils its said vaults would pit through and cease to become waterproof in from eight to ten years, conjunction of conditions, which does not always exist, must obtain in the case of said air sealed vaults in order to provide protection from the effects of entering water, its vaults and metals from which made had not been tested under ground for the full period of 50 years, disinterment is rare, and it had rarely been called upon to replace its said vaults;

¹ Count Two of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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With capacity and tendency, as a result of such misleading acts and practices, to induce public to purchase and use its said vaults in the belief that said statements and representations, which were each and all to the prejudice of the public, were true, and to divert unfairly trade to it from its competitors engaged in sale and distribution of metal, stone, concrete, cement, and other burial vaults, in and between the various States:

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

Mr. E. J. Hornibrook for the Commission.

Mr. Herman L. Weisman, of New York City, and *Waite, Schindel & Bayless* of Cincinnati, Ohio, for respondent.

COMPLAINT

Acting in the public interest and pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Springfield Metallic Casket Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of an Act of Congress approved June 16, 1933, known and designated 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, states its charges in that respect as follows:

Count 1

PARAGRAPH 1. The respondent, Springfield Metallic Casket Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield in said State. It is now, and for several years last past, has been engaged among other things in the business of manufacturing and selling metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof, many of whom reside in States other than the State of Ohio and in the District of Columbia, and when orders are received therefor, they are filled by respondent by shipping the same from the said city of Springfield, State of Ohio, into and through other States of the United States and the District of Columbia to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of its said business, respondent is in competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone,

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concrete, cement, and other grave vaults between and among various States of the United States.

PAR. 3. Respondent sells and ships said grave vaults, as aforesaid, to jobbers, funeral directors, and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of their dead.

PAR. 4. (A) In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which is circulated among its customers and prospective customers residing in the several States of the United States, and which respondent's said customers use and are authorized by respondent to use in the sale and the promotion of the sale of its said vaults, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made.

That said grave vaults will remain waterproof and airtight when placed underground; that the metal of which said vaults are made withstands the ravages of time, resists rust and corrosion for a period of 100 years or more.

(B) Respondent issues with each vault for delivery to the ultimate purchaser thereof and they are so delivered, a written purported warranty which provides as follows:

WARRANTY

Springfield Metallic Grave Vaults

Every Springfield air-sealed metal grave vault of the styles known as No. 10, No. 9, No. 7 and York, as well as the open end (No. 5) style is made exclusively and entirely of genuine Armco ingot iron. The metal used in these vaults is entirely of No. 12 United States Standard gauge. The above trade name and gauge of metal are definitely stated in the Springfield trade-mark affixed to each of these vaults.

(The trade-mark reads:

Springfield
Made of 12 Gauge
The
Pioneer
Line
Established
1884
Ingot Armco Iron
Springfield Metallic Casket Company,
Springfield, Ohio.)

The highest standard of workmanship on these vaults is the result of nearly one-half century of experience in manufacturing quality burial receptacles. Every one of the above mentioned vaults must pass a rigid inspection as to

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quality of workmanship. Each of the air-sealed types must also pass a complete water submersion test made in 5,000 pounds electrically controlled pressure to prove its air and water tightness. Each of the above mentioned vaults will withstand a top weight of more than 20,000 pounds without perceptible deflection or injury to the vault.

We hereby warrant the above mentioned vaults for a period of fifty years from date of purchase against water entry as a result of defective construction, rust or corrosion. Any such vault found to be defective from causes stated herein will be replaced without cost to the purchaser of the vault or to the funeral director who sold it. This warranty is invalid unless dated and countersigned by the funeral director at time of sale of the vault, and nothing in this warranty shall obligate the company against damage to the contents of the vault from dehydration of the remains or from any other cause not specifically stated herein.

The Springfield Metallic Casket Company,
By E. N. Lupper,
President and General Manager.

(C) Respondent in connection with its advertising and sale of metal grave vaults as aforesaid, unfairly disparages the stone, concrete, and cement burial vaults of its said competitors in manner following:

It disparages and condemns the use of stone, concrete, and cement burial vaults by publishing a picture of a purported cement, concrete, or stone burial vault in a badly disintegrated condition with this comment:

Cement caskets or cement vaults will not protect contents.

Isn't this a most horrible condition to find a casket as shown below. A reinforced cement casket gone all to pieces—no better than a wooden box. Why buy cement vaults. They will fill up with water and then go to pieces, the same as casket shown in picture below.

PAR. 5. The statements and representations described in subdivision (A) of the preceding paragraph are false and misleading in that respondent's said grave vaults will not always remain waterproof and airtight when buried in the ground; that they will not always remain watertight and airtight for a period of fifty years or for any definite period when buried underground; that respondent's said vaults are not made of rust resisting, non-corrosive materials; that respondent's said vaults when buried under the ground do not always afford positive or permanent protection to the body or coffin encased therein; that the metals of which respondent's vaults are made are not proof against crumbling; that the tests made of respondent's said vaults before shipment are not sufficient to assure that they will remain in all cases watertight or airtight; that respondent's said vaults are made of metals which will corrode and rust; that there is a vast difference in the corrosive properties of soils throughout the United States; in some soils respondent's said vaults will pit and

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corrode in a period of from three to ten years and in others from ten to twenty years; that respondent's said vaults have not been tested underground for a period of fifty years, nor has the metal of which they are made been so tested; that in many instances respondent's said vaults will corrode and have corroded and pitted so as to let water into them; that in many instances they will corrode and have corroded and rusted so as to cave in or collapse; that respondent's said vaults when buried underground are not airtight or waterproof and will, and often do permit water or air to enter therein. Either air or water entering respondent's vaults when buried underground promote and cause disintegration of the coffin and body encased in said vaults. Water often enters the graves of the dead. The mechanism provided by respondent for sealing its said vaults will not at all times prevent the entrance of water into said vaults to an extent where the coffin is damaged.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false and misleading and deceptive in that the terms "waterproof" and "airtight" as used by respondent, as aforesaid, means to the ultimate purchaser thereof a watertight, airtight vault; a vault which will not permit water or air to enter the same and that will endure as such under burial conditions. The respondent's said vaults are not waterproof nor airtight as the terms are understood by the ultimate purchaser thereof. Water or air may seep into or enter the said vaults through the walls, joints, and flanges thereof or pin holes due to rust or corrosion, or due to collapse or bending of the vault.

These purported warranties contain a clause to the effect that the Springfield Metallic Casket Company warrant such vaults for a period of fifty years from the date of purchase thereof against water entering such vault from the grave due to defective construction, rust or corrosion. Exhumations of bodies after burial are so rare as to make these certificates of warranty worthless to the purchasers of such vaults for the reason that no opportunity is afforded them to ascertain whether such vaults have or have not been airtight or waterproof. These said purported warranties are not warranties, but are merely sales persuaders under the terms of which respondent will rarely, if ever, be called upon to replace said vaults. It is false and misleading for respondent to call them warranties or to issue them. Ultimate purchasers are induced to buy respondent's said vaults because of said warranties.

The picture of the disintegrated cement, stone, or concrete vault and the comments thereon made by respondent in its advertising, as aforesaid, do not represent the true or general conditions of such

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vaults after having been buried in the ground and are used by respondent for the purpose of discouraging purchasers or prospective purchasers from buying said vaults for use in the burial of their dead and to encourage them in the purchase of respondent's own vault.

PAR. 6. Each and all of the said false and misleading representations used by respondent as set out in paragraph 4 hereof have and have had the capacity and tendency to induce the public to purchase and use respondent's said grave vaults in the belief that they are true and have and have had the tendency and capacity to divert trade from said competitor's of respondent.

PAR. 7. The acts and practices of respondent above set forth are all to the prejudice of the public and to 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."

Count 2

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield, in said State. Respondent is now, and for several years last past has been engaged in the business of manufacturing, selling, and distributing metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof located at points in the State of Ohio and at points in various other States of the United States and in the District of Columbia, and causes said products when so sold to be transported from its principal place of business in the city of Springfield, Ohio, to the purchasers thereof in the State of Ohio, and to other purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by the said respondent in said product in the State of Ohio, between and among the States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts, and relies upon all matters and things set out in paragraphs 2 to 7, inclusive, of count 1 hereof to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph.

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PAR. 3. On November 4, 1933, under and pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued, and approved a Code of Fair Competition for the Funeral Supply Industry, which became effective on the tenth day thereafter. The respondent herein was a party to and signatory of such Code of Fair Competition and such Code is now in full force and effect as to this respondent.

The said National Industrial Recovery Act, Section (3), Paragraph (B), provides:

If 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 supervision thereof. Any violation of such standards in 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.

In Article IX, under the heading of "Trade Practice" of said Code, appears the following:

1. The following practices constitute unfair methods of competition and are prohibited:

To resort to or indulge in practices which are prejudicial to the public interest such as

Misbranding,
Misrepresentation in branding,
Labeling,
Selling, and
Advertising.

(W) Nothing in this Code shall limit the effect of any adjudication by the courts or holdings by the Federal Trade Commission on complaint, finding and order, that any practice or method is unfair providing that such adjudication herewith is not inconsistent of any provision of the Act or of this Code.

Notwithstanding the said provisions of said Code of Fair Competition, respondent has continued to and does, use said methods of competition hereinabove alleged and described, and has resorted to or indulged in the practices of misrepresentations in branding, labeling, selling, and advertising its said vaults in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition for the said Funeral Supply Industry of the United States. Such violation of such standards in the aforesaid transaction in interstate commerce and in other transactions which affect interstate commerce in the manner set forth above are in violation of Section (3) of the National

Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

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 12th day of March, A. D., 1935, issued and served its complaint in this proceeding upon respondent, Springfield Metallic Casket Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and respondent by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto. It was further agreed that the said Commission might proceed upon such statement of facts, including inferences drawn from said stipulated facts, to issue its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission, and approved by it. Thereafter the proceedings came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Springfield Metallic Casket Company, is and has been for the past fifty years, since 1886, a corporation duly organized and existing under the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield, in the State of Ohio.

Respondent is now, and for the past fifty years has been, engaged in the business of manufacturing and selling metal caskets and metal

burial vaults; said vaults are intended to be, and actually are, used to encase or enclose coffins in the burial of the human dead. Said vaults are designated by respondent as air sealed vaults and mechanically sealed end closing vaults.

Respondent sells and ships its said vaults to jobbers, funeral directors, and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of their dead.

It now sells and ships and has so sold and shipped its vaults to such purchasers thereof to be used in the State of Ohio and other States of the United States; when orders are received by it therefor, they are filled by causing said vaults to be shipped from the said city of Springfield, in the State of Ohio, into and through other States of the United States to the respective places of business or the residences of such purchasers.

PAR. 2. In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which are circulated among its customers and prospective customers residing in the several States of the United States, and which said customers of respondent use and are authorized by respondent to use in the sale and in the promotion of the sale of its said vaults, respondent has made, prior to the year 1932, but not since that year, the following claims, statements and representations as to its vaults, to wit:

The metal of which its vaults are made withstands the ravages of time and resists rust and corrosion, said vaults will remain waterproof and airtight when placed underground.

Respondent voluntarily abandoned, and in the usual course of business ceased to use, the above statements, and has not made since 1932, nor does it now make, issue or use them, or either of them.

PAR. 3. Respondent, prior to July 1, 1934, issued with its air-sealed vaults, for delivery to ultimate purchasers thereof—and they were usually so delivered—written certificates of warranty, in words and figures as follows:

WARRANTY

Springfield Metallic Grave Vaults

Every Springfield air-sealed metal grave vault of the styles known as No. 10, No. 9, No. 7 and York, as well as the open end (No. 5) style is made exclusively and entirely of genuine Armo Ingot Iron. The metal used in these vaults is entirely of No. 12 United States Standard gauge. The above trade name and gauge of metal are definitely stated in the Springfield trademark affixed to each of these vaults.

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(The trade-mark reads :

Springfield
 Made of 12 Gauge
 The
 Pioneer
 Line
 Established
 1884
 Ingot Armco Iron
 Springfield Metallic Casket Company
 Springfield, Ohio.)

The highest standard of workmanship on these vaults is the result of nearly one-half century of experience in manufacturing quality burial receptacles. Every one of the above mentioned vaults must pass a rigid inspection as to quality of workmanship. Each of the air-sealed types must also pass a complete water submersion test made in 5,000 pounds electrically controlled pressure to prove its air and water tightness. Each of the above mentioned vaults will withstand a top weight of more than 20,000 pounds without perceptible deflection or injury to the vault.

We hereby warrant the above mentioned vaults for a period of fifty years from date of purchase, against water entry as a result of defective construction, rust or corrosion. Any such vault found to be defective from causes stated herein will be replaced without cost to the purchaser of the vault or to the funeral director who sold it. This warranty is invalid unless dated and countersigned by the funeral director at time of sale of the vault, and nothing in this warranty shall obligate the company against damage to the contents of the vault from dehydration of the remains or from any other cause not specifically stated herein.

Springfield Metallic Casket Company,
 By E. M. Lupper,
 President and General Manager.

PAR. 4. Respondent voluntarily abandoned, and in the usual course of business ceased to use the foregoing warranty in July 1934, and has not since then issued, nor does it now issue, use or deliver, or cause to be delivered said warranty.

In July 1934, respondent adopted and since then has issued and now issues with each vault, for delivery to ultimate purchasers thereof—and they are usually so delivered—a written certificate of warranty in words and figures as follows:

WARRANTY

Springfield Metallic Grave Vaults

Highest Standard—Electrically Welded—
 Equal to Any on the Market.

The Springfield Metallic Casket Company WARRANTS: That each Springfield Vault, No. 5, No. 7 (open end) Styles and No. 9 and No. 10, air sealed styles, are manufactured of Armco Ingot Iron, No. 12 gauge, and built by skilled

workmen and have been tested by being submerged in water, and inspected and found to be free from defects in material or workmanship.

The Springfield Metallic Casket Company will replace any such vault without cost if its contents are damaged by water or other elements admitted from the grave because of the failure of the vault due to rust, corrosion, defective material or workmanship, but does not warrant against damage to the casket or contents caused by the dehydration of the remains.

This warranty has been issued by a duly authorized officer of the company, whose signature is hereto affixed and has been countersigned by the funeral director at the time of delivery.

Springfield Metallic Casket Company,
By Chas. H. Hiser,
President and General Manager.

PAR. 5. Respondent until January 1928, but not since that time, in some of its advertising of its vaults, published a picture of a cement burial vault showing a badly disintegrated condition and commented upon this condition.

Since January 1928, respondent has ceased to use, publish, distribute, or cause to be distributed, such photographs or comments.

PAR. 6. The ferrous metal used by respondent in the manufacture of its said burial vaults is Armco Ingot Iron and Armco Iron manufactured by the American Rolling Mill Company of Middletown, Ohio.

These metals are purchased by the respondent in sheets of extra dimensions of 12 U. S. Standard gauge and heavier thicknesses, specially processed and rolled for the purpose of the manufacture of burial vaults.

The cost of Armco Ingot Iron is considerably higher than the cost of ordinary commercial steel. It is one of the highest grade and quality of metals that are now in the market in the United States, which can be obtained by respondent for the manufacture of its burial vaults.

Armco Ingot Iron, purchased by respondent and used in the manufacture of all of its vaults, is a highly refined grade of steel, carefully made under the best, modern scientifically controlled steel-making processes. It is a high quality metal, made as carefully, accurately and thoroughly as it can be made by exact control of furnacing operations to make the best metal that will resist, but not prevent, corrosion, in the sense that the high purity and quality of the metal tends to retard and slow the rate of corrosion and tends to increase its durability underground for a longer period of time than if the impurities were not removed from the metal.

The above named steel manufacturing company, from whom respondent purchases Armco Ingot Iron, represents in its advertising and otherwise to the respondent that said metal is rust resisting. It

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is a manufacturer of recognized responsibility and integrity. This company makes rigid tests and inspection of each sheet of said metal before shipping to the respondent.

These metals are, by their very nature, impervious and impenetrable by air, moisture and water, and will exclude them from seeping or going through or between any pores or molecules of said metals during the life of said metals, which terminates when a hole has been punctured or has penetrated through the metal from any instrument, rust or corrosion.

These metals are not rust-proof or corrosion-proof, but will rust and corrode after they are buried underground. They are not rust-resisting or corrosion-resisting to the extent or degree that they will never rust or corrode after burial underground. If they have rusted and corroded to a certain extent during a period of years after burial underground, they will crumble and corrode.

PAR. 7. Respondent's said vaults are manufactured with great care by skilled workmen.

PAR. 8. Respondent's said air sealed vaults are constructed on the air seal principle. The vaults consist of two parts: (1) A pan or base, and (2) a dome (hood or top).

The outside measurements of said vault are: Length, 91 inches; width, 33 inches; and height, $27\frac{7}{8}$ inches. It weighs empty and without a casket in it, 298 pounds. Its inside dimensions are: Length, 88 inches; width, 30 inches; side height, 19 inches; center height, 24 inches above the top of the pan.

The entire dome consists of three pieces, two ends and one piece which forms the rounded top and both sides. The ends are electrically welded from the inside and acetylene welded from the outside, so as to then make the dome airtight and watertight in the sense that no air or water can then get through the metal or welds of the top, sides and ends of the dome from the outside of the dome to the inside of the dome. Of course, water and air can go in and out of the dome from the bottom of it, as the dome itself has no bottom to it.

The pan is made of one piece of steel and the ends are electrically welded on Type No. 10 vault; on Type No. 12 vault the ends are bent down and pieces are electrically welded in the corners. The pan is flat on top and the four edges are turned down so as to raise the top of the pan three inches above the plane of the upper surface of the flange as it rests on the ground or support. The edges of the pan are turned outward $1\frac{5}{8}$ inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of 2 square feet and $103\frac{5}{8}$ square inches. The entire base resembles an inverted pan. At each of the four corners of

the pan is a hole, pierced through it near its top edge. Circulation of air from the hollow space under the pan into the hood is provided by these holes, thereby making one single column of air.

Projecting $\frac{3}{4}$ inch above the top of the pan are four small raised bosses or casket rests, which support the bottom of the casket when it is placed in the vault. Thus, the bottom of the casket is raised $\frac{3}{4}$ inches above the top surface of the flange on the pan.

The bottom edge or rim of the dome rests on this outside flange of the pan, the width or thickness of the metal from the bottom of the grave or the grave floor.

Respondent's said air-sealed vaults are constructed on the principle of the diving bell—as water completely surrounds the vault to the extent that it covers the entire line of juncture between the dome and the flange on the pan the pressure of the confined air on the inside of the dome resists the pressure of the water head so as to prevent the surface of the water level rising above the lower edge of the dome. The air within the vault is not sealed until then. As the water level rises in the ground surrounding the vault, its pressure forces the air from the empty space underneath the raised portion of the pan through the holes at each corner of the pan into the hood, where it is added to the air within the dome, thereby increasing the pressure and resistance of the air to the pressure of the water level in the ground, and so adding to the effectiveness of the operation of the air-seal principle of the vault.

The dome of each air seal burial vault manufactured is tested before it is shipped, by submerging in water the dome in an upright position, without the pan being placed under it. The dome, containing air inside it is forced down into the water by a mechanical apparatus similar to a baling press. It operates on a screw and exerts pressure on top of the dome, and thereby forces the dome under the water. The pressure necessary and actually used, in order to put the dome down so that the top of the dome is under the water, and thus submerged, is two and one-half tons, or 5,000 pounds. This pressure is applied so as to equally distribute it over the top of the vault.

The purpose of making this test is to find any defect in the material of the dome or in the welds in the dome. If any air bubbles rise to the surface of the water, it indicates that air is escaping from the inside of the dome through a hole in the material, or a defect in the welding; then the dome so found to be defective would be returned to the production line and this defect would be repaired and the dome would be given a second test. If the defect is in the metal itself, the unit is rejected and not used thereafter. If no air bubbles rise to the surface of the water, it indicates that no air is escaping from the inside of the

dome and that the dome is airtight; then the dome is approved for shipment, and it is waterproof and airtight at the time of shipment.

PAR. 9. When for any reason the air seal principle of the above-described vault is not in operation, the vault is not airtight as a vault. Air can circulate freely and water can enter the dome and rise within it to the extent that it is not resisted by the pressure of the air confined within the dome.

PAR. 10. According to the recognized principles of mechanical engineering applied in the construction of the respondent's air-sealed vaults, the confined air within the dome of respondent's vaults, buried level on the bottom of the grave, containing a corpse in an ordinary casket, or one not hermetically sealed, estimated at five cubic feet, will resist by the air seal principle the pressure of a water column in the ground five feet, or 60 inches, above the lower edge of the hood, and under such conditions, the water in the vault will rise only to the top of the pan, or one inch below the rests for the bottom of the casket. According to such recognized principles it would require a water column in the ground 6.1 feet or 73.2 inches above the lower edge of the hood for the water in the vault to rise so as to submerge the bottom of the casket.

Respondent's air sealed vaults, even though provided with said mechanical principles of air sealing, will not, under all burial conditions, prevent the entrance of water into said vaults to such a height as to damage the coffin and body placed therein. The metals from which said vaults are made will corrode and rust. If said metals do so corrode or rust to the extent that holes or punctures, which will permit the entry of water, develop, and there is sufficient water in the grave to reach the holes or punctures, or exit of air from the enclosed portion of the dome develops, then the entire principle of the diving bell is defeated.

In some instances said air sealed vaults will corrode and rust so as to cave in and collapse. Respondent's said vaults have never been tested for corrosion for a period of fifty years, nor has the metal from which they are made been so tested; respondent's said vaults when buried underground will, and often do, permit air, vermin, and water to enter them. Water entering respondent's said vaults to such a height as to touch the casket will promote in some instances disintegration of the body and the casket therein. Water often enters the graves of the dead. In many cemeteries of the United States, water rises in some graves to a depth of 6 feet.

In addition, in order for said air sealed vaults to provide protection of the casket and body placed therein from the effects of water

entering from the grave, they must be buried and remain buried under the following conditions, which are:

- No. 1. The hood of the air seal vault must not be defective and the metal and welds must be airtight.
- No. 2. The vault should be buried level.
- No. 3. The vault should be buried on the surface of the bottom of the grave and have no earth or other material which occupies the empty space underneath the pan.
- No. 4. There should be no change in temperature after its burial.
- No. 5. There should be no change in barometric pressure after its burial.

These said conditions do not obtain in all conditions of burial where said vaults are used.

Condition No. 1 is essential for the operation of the air seal principle. A change in conditions Nos. 2 or 3 affect the air seal vault unfavorably to a more or less degree in that they reduce the amount of confined air within the dome and also its pressure, when this vault is sealed by water rising above the lower edge of the hood, and thus the water within the hood tends to rise higher. A change in conditions Nos. 4 and 5 may affect these air seal vaults favorably, or it may affect these vaults unfavorably and make the water rise higher in the hood, even though the air seal principle is in operation. When changes in conditions 2, 3, 4 and 5 are sufficient to cause water to enter said vault and to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

PAR. 11. Said air sealed vaults are not shipped by respondent until the domes thereof have been tested and proved to have no defects in its metal or in its welds, and the domes thereof are waterproof and airtight at the time of shipment. No test is made of metal and weld of the pan.

PAR. 12. A corpse, either embalmed or not embalmed, is in the process of decay and disintegration at the time of its burial. The process of embalming is the method of injecting certain fluids into the corpse for the purpose of delaying such decay and disintegration of the corpse for a temporary period of time after burial. The delay in disintegration thus brought about is temporary and not permanent.

The above described use of the air seal vaults of the respondent is intended for the purpose of protecting the corpse against such accelerated decay and disintegration through damage by water rising to such a height within the dome of the vault that it will touch the bottom of the casket. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

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PAR. 13. The terms "waterproof" and "airtight" and "vermin proof" as used by respondent as described herein, mean in fact, and are understood by many ultimate purchasers of said air sealed vaults to mean, a watertight, airtight, vermin proof vault, which will not permit water, air or vermin to enter the same and that it will endure as such under burial conditions for a period of twenty-five to fifty years or more. Water, vermin and air do enter these said vaults through the bottom holes, holes due to corrosion, or other causes, or when there is so much water in the graves in which they are contained that the water touches the casket, or because of absence of one or more of the conditions described in paragraph 10 hereof. Said vaults are not vermin proof or airtight until the same are sealed with water.

Disinterment after burial is rare and respondent has rarely been called upon to replace said vaults.

PAR. 14. The metals of which all of respondent's vaults are made are ferrous metals and will rust after burial underground. Rust is an oxidation of iron, a union of iron and oxygen, and its presence means that to some extent the metal has corroded.

The corrosive qualities of different soils vary to a great extent. In some soils the corrosion is practically negligible.

There are many sections throughout the United States where soil corrosion is not a problem. In some soils in the United States a 12 U. S. Standard gauge metal vault buried underground would resist penetration by corrosion for a period of more than 100 years.

As one goes down in the ground, the strata in contact with the burial vault changes, and it may be a more corrosive or less corrosive strata, depending on the location.

The life of a metal burial vault unless punctured by rust or corrosion, depends upon the character of the soil in which it is buried and upon the climatic and other conditions prevailing in the locality where interment is made.

All soils are more or less corrosive and in the course of years will cause all ferrous metals to pit or corrode.

Corrosion, in the course of years, will cause the failure of respondent's ferrous metal vaults.

Respondent's vaults, and the metals from which they are manufactured, have not been tested underground for the full period of fifty years.

There are some soils in the United States where respondent's ferrous metal vaults will pit through and cease to be waterproof in a period of from eight to ten years.

PAR. 15. Metal grave vaults of 12 gauge metal have been disinterred, in good condition, with no water in them, no holes in them, and no

damage to the caskets and the corpses in them from water entering or having entered these vaults from the grave in 26 States and the District of Columbia, after being buried 48 years, 37 years, 35 years, 30 years, 27 years, 26 years, 25 years, 24 years, 23 years, 22 years, 21 years, 20 years, 19 years, 18 years, 17 years, 16 years, 15 years, 14 years, 13 years, 12 years, 11 years, 10 years, 9 years, 8 years, 7 years, 6 years, 5 years, 4 years, 3 years, 2 years, and one year or less.

Other metal vaults of 12 gauge ferrous metal have been disinterred and found to be in bad condition, with water in them, with holes in them, and the caskets and corpses therein in a damaged condition due to water having entered these vaults from the grave in which they were contained.

PAR. 16. In addition to the air seal vaults hereinbefore referred to, respondent also manufactures and sells as aforesaid two types of mechanically sealed and closing vaults, the quick closing type and the bolted end type. The ends are stamped out of sheet metal by powerful presses, using special dies to bend to form at the same operation. The bottoms are stamped in like manner. Side walls and dome are formed by bending the metal sheets in great presses. The vault is electrically welded on the inside. The ends, except the door, are electrically welded to the side walls and dome on the inside. The door at the open end of the mechanically closed types is hinged on one sidewall or the top.

In the quick closing type, the door is equipped with powerful clamps and closes tightly against a gasket. When the operating mechanism on the outside of the door is turned the clamping plate on its inner side engages behind a flange inside the wall and seals the vault.

In the bolted end type, the door is removable in its entirety and has no hinges. When the door is placed in position against the gasket, it is then bolted securely all the way around the edge of the door; this door can be opened and removed only by releasing these bolts.

Each of the two mechanically sealed types of Springfield vaults manufactured by respondent is tested before it is shipped by locking the open end as above described, then drilling a small hole in the door, and attaching an air compression line at this hole; then completely submerging the vault under water in the same manner as the respondent tests its air seal vaults; then compressed air is forced into the submerged vault through the air line so connected with the vault. The remainder of the test, inspection and rewelding is identical as in the case of the air seal vault, except that after the test has been completed and the vault is found to be airtight, the hole for the introduction of the compressed air is closed by welding.

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These two types of end-closing vaults of the respondent are intended by the respondent for the purpose of protecting the corpse against accelerated decay and disintegration through damage by water, the admission of vermin, air and other elements from the ground. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

PAR. 17. Each of the mechanically sealed types of vault manufactured by respondent has been proved by tests to be airtight, watertight, and waterproof before shipment thereof and if it remains so at the time of burial and is properly closed and sealed, it will not permit any water to enter it from the ground at the time of burial; it will remain waterproof so long as the life of the metal and the life of the seal, and the vault will cease to be waterproof when a hole has been punctured through the thickness of the metal by rust or corrosion or other causes or the seal has ceased to function or the vault has collapsed.

PAR. 18. In the course and conduct of said business, respondent is in substantial competition with other individuals, copartnerships, and corporations engaged in the sale and distribution of metal, stone, concrete, cement and other burial vaults in and between the various States of the United States.

PAR. 19. Respondent is and has been financially able, ready and willing to comply fully with and perform the full terms of its written certificate of warranty, by replacing without cost any one of its vaults which has been damaged by water admitted from the grave because of failure of the vault due to rust, corrosion, defective material or workmanship; respondent has made and issued said certificates of warranty in good faith.

PAR. 20. All of the said ferrous metal burial vaults so manufactured by the respondent are useful, proper and suitable receptacles for the burial of the dead and are transported in interstate commerce for such purpose. In certificates of warranty and in other advertising material used by the respondent, its agents, employees and representatives, in offering for sale or selling the various types of air seal or end-closing ferrous metal burial vaults manufactured by it, the respondent has represented:

1. That the metal of which said vaults are made withstands the ravages of time and resists rust and corrosion;
2. That its vaults will remain waterproof and airtight when placed under ground;
3. That they are water-proof.

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The respondent has also unfairly disparaged cement burial vaults by the publication of a picture in January 1928, but not since that date, of a disinterred cement burial vault in badly disintegrated condition and by comment calling attention to the bad condition of the said cement burial vault. In connection with the sale of its vaults, the respondent has also made use of certificates of warranty which guarantee such vaults to be airtight, vermin proof and water-proof, when used for burial purposes.

All of the aforementioned representations, together with the acts and practices of the respondent, hereinabove set out, are deceptive and misleading and have and have had the capacity and tendency to induce the public to purchase and use respondent's vaults in the belief that said statements and representations are true, and each and all of them are to the prejudice of the public, and have the capacity and tendency to unfairly divert trade to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions described in the foregoing findings, are to the prejudice of the public and of respondent's competitors; they are 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 the complaint of the Commission, the answer of respondent, the stipulated facts filed herein, 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 Springfield Metallic Casket Company, a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of ferrous metal burial vaults in interstate commerce or in the District of Columbia, forthwith cease and desist from:

I. Representing in purported certificates of warranty, or guarantees, in advertising, or in any other manner, that:

- (a) The metal of which any of said vaults are made withstands the ravages of time, and resists rust and corrosion;

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- (b) Its said vaults will remain waterproof and airtight when placed underground, for a period of fifty years, or for any fixed or stated period of time;
- (c) Its said vaults are waterproof or airtight;

II. And from publishing, in connection with the sale of said vaults as aforesaid, pictures, drawings and photographs of cement burial vaults, disinterred in badly disintegrated condition, and from comment calling attention to such condition;

III. And from so making other representations of like import;

IV. And from using certificates of "Warranty" or "Guaranty" in connection with the sale or offering for sale of such vaults, unless it clearly appears therein that such certificates refer to the care, skill, mechanism and materials used in the construction of said vaults, and to tests made to determine whether they leak, and not to their durability as to remaining airtight, vermin proof, or waterproof, when used for burial purposes.

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
JOHN H. DOCKMAN & SON, INC.

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

Docket 2709. Complaint, Jan. 31, 1936—Decision, Nov. 27, 1936

Where a corporation engaged in manufacture and sale of "straight" goods candy, and of so-called "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such type of candy, who buy same in preference to so-called "straight" goods when displayed side by side, by reason of lottery or gambling feature connected with former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of the so-called "draw" or "deal" merchandise—

Sold to syndicated retail dealers and to wholesalers and jobbers in the various States, its said candy, including such break-and-take, draw, or deal assortments, as assortments in which (1) chance punch from 150-hole punch board included determined whether person making selection received simply the candy pellet disclosed or, depending upon the red, white, or blue color of a few of said pellets, further received, as the case might be, a toy auto whistle, stone pendant, or toy bird warbler, with purchaser of last punch further receiving gilt pencil; (2) same plan and board were used with other articles of merchandise; and in which, (3) chance selection of one of a large number of pieces of chocolate-coated candy, concealed color of a few of which differed from that of majority, entitled person to prize consisting of larger pieces or boxes of candy; so packed and assembled that such various assortments could be displayed and offered by the numerous retailer purchasers thereof, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to the public by lot or chance by the retailers thereof, including practically all stores in which candy is sold; in violation of public policy, and in competition with some manufacturers who have begun sale and distribution of candy for resale to public by lot or chance to meet competition of those who sell and distribute candy sold by such methods and in demand, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the industry, through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers 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 public by lot or chance;

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With the result that such refusing competitors, who can compete on even terms only by giving same or similar devices to retailers, were put to a disadvantage in competing and their sales of straight candy showed a continual decrease, public and competitors were prejudiced and injured, and trade was diverted to it from its 'said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry concerned:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Samuels & Clark, of Baltimore, Md., 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 John H. Dockman & Son, 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 of Congress, 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 is a corporation, organized under the laws of Maryland with its principal place of business in the city of Baltimore, State of Maryland. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale 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 place of business in the city of Baltimore, State of Maryland, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products 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, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed

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and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said packages is hereinafter described for the purpose of showing the methods used by respondent, but this description is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance. These assortments are advertised and sold under several names, but each involves use of the same method of chance by which the purchaser may procure, at no additional cost, other articles of merchandise. The method used is as follows:

Certain of said assortments are composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of articles of merchandise, together with a device commonly called a punchboard. The candy and articles of merchandise contained in said assortment are distributed to purchasers of punches from said punchboard in the following manner:

Punches from said board are 1¢ each, and when a punch is made a colored pellet is disclosed. There are as many separate pellets as there are punches on said board. A majority of said pellets are of uniform color, but a small number of said pellets bear colors of a shade different from the color of the majority of said pellets. The board bears statements or legends informing the prospective purchaser as to which pellets entitle him to receive a small item of candy, and which pellets entitle him to receive an article of merchandise. All purchasers of punches from said board receive an item of candy, but certain punches, namely those disclosing a pellet colored differently from the majority of pellets, entitle the purchaser to another article of merchandise in addition. The pellets in said punchboard are effectively concealed from purchasers or prospective purchasers until a punch has been made and the particular pellet separated from the punchboard. The additional articles of merchandise contained in said assortments are thus distributed to purchasers of punches from said punchboards wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure other articles of merchandise.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

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 January 31, 1936, issued and served its complaint in this proceeding upon the respondent, John H. Dockman & Son, Inc., a corporation, charging the respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and P. C. Kolinski, attorneys for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission.

The respondent was represented by Messrs. Edwin F. Samuels and Thomas W. Y. Clark, but offered no testimony or other evidence in opposition to the allegations of the complaint.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence on behalf of the Commission, and brief in support of the complaint; no brief having been filed on behalf of the respondent, oral argument having been waived, and the Commission, having duly considered the matter and being now 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, John H. Dockman & Son, Inc., is a corporation organized under the laws of the State of Maryland, with

its principal office and place of business in the city of Baltimore, State of Maryland.

Respondent is now, and for several years last past has been, engaged in the manufacture of candy in Baltimore, Md., and in the sale and distribution of said candy to wholesale dealers and jobbers located in the State of Maryland and in the other States of the United States. It causes said candy, when sold, to be shipped or transported from its principal place of business in Baltimore, Md., to purchasers thereof in Maryland and in other States of the United States.

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 and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof 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, respondent sells and has sold to wholesale dealers and jobbers various 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.

One such assortment consisted of a number of pieces of candy, a number of other articles of merchandise, and a device commonly called a "punchboard." The candy and other articles of merchandise were distributed by means of the said punchboard in the following manner:

The punchboard contained 150 punches, and when a punch was made a candy pellet was disclosed. The majority of the said pellets were black, but a small number were red, a small number were white, and a small number were blue. The color of the pellets was concealed from the purchaser and prospective purchaser until a punch had been made and the pellet separated from the board. Purchasers obtaining a black pellet received one of the pieces of candy, purchasers obtaining a red pellet received a toy auto whistle, purchasers obtaining a white pellet received a stone pendant, and purchasers obtaining a blue pellet received a toy bird warbler. The purchaser of the last punch from said board received, in addition to the piece of candy or other article of merchandise, a gilt pencil. This assortment was designated by respondent as "150 Pencil Puncherine."

The fact as to whether a purchaser received one of the pieces of candy or one of the other articles of merchandise was thus determined wholly by lot or chance.

This assortment, when offered to the public, contained 150 units of sale and the complete assortment was sold by the respondent to wholesale dealers and jobbers for 80¢, and the normal price paid for the complete assortment by retail dealers was \$1.00.

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The respondent manufactured, sold and distributed a similar assortment containing a number of pieces of candy and a number of other articles of merchandise and a punchboard identical in design. This assortment was designated by respondent as "150 Harmonica Puncherine."

The respondent also distributed two other assortments involving the same principle but varying in detail, namely, assortments containing 150 pieces of candy, the color of which was concealed within a chocolate coating, and the prizes consisting of larger pieces or boxes of candy to be given free of charge to purchasers obtaining a piece of candy of a particular color.

PAR. 3. The candy assortments involving a lot or chance feature, as described in paragraph 2 hereof, are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance feature, 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 designate these types of assortments.

PAR. 4. Numerous retail dealers purchase the assortments described in paragraph 2 hereof from wholesale dealers and jobbers who in turn have purchased said assortments from the respondent. Such retail dealers display said assortments for sale to the public as packed and assembled by the respondent, and the candy and other articles of merchandise contained in said assortments are sold and distributed to the consuming public by means of the above described punchboards, or in accordance with the above described sales plans.

PAR. 5. The respondent sells its merchandise to syndicated retail dealers and to wholesale dealers and jobbers in the various States of the United States, and respondent's merchandise, both "straight" and "break and take" or "draw" or "deal" assortments, is resold in practically all stores where candy is sold.

All sales made by respondent are absolute sales, and respondent retains no control over the goods after they are delivered to the wholesale dealers and jobbers, or to the retail dealers. The assortments described in paragraph 2 hereof are packed in such manner that they can and may be displayed and offered for sale without alteration, addition or rearrangement to the consuming public by means of a lottery, gaming device, or gift enterprise.

The sale and distribution of candy by retail dealers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gaming device, or gift enterprise.

In the sale and distribution to wholesale dealers and jobbers for resale to retail dealers of assortments of candy assembled and packed

as described in paragraph 2 hereof, respondent has knowledge that the 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, without alteration, addition or rearrangement, be resold to the public by lot or chance by said retail dealers.

PAR. 6. Many competitors of respondent regard such methods of sale and distribution as morally bad and as 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. 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" candy show a continued decrease.

There is a 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 resold 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 respondent's competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. The principal demand in the trade for the "break and take," or "deal," or "draw" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize candy assortments are principally children and because of the lottery or gambling feature connected with the "break and take," or "draw," or "deal" assortments and the possibility of becoming a winner it has been observed that the children purchase them in preference to the "straight" candy when the two types of assortments are displayed side by side.

The children prefer to purchase the lottery or prize assortments of candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," or "draw," or "deal" 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

Order

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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. 8. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and who sell their "straight" candy in interstate commerce in competition with the "break and take," or "draw," or "deal" candy, and manufacturers of the "straight" type of candy have noted a marked decrease in the sales of their product whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature connected with the "break and take," or "draw," or "deal" candy.

PAR. 9. An officer of the respondent corporation testified and the Commission finds that the gross annual volume of respondent's business is approximately \$250,000.

PAR. 10. The Commission further finds that the sale and distribution in interstate commerce of assortments or packages of candy so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell the same to the consuming public by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, John H. Dockman & Son, Inc., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and brief of counsel for the Commission, and no testimony or other evidence having been offered by the respondent, nor brief having been filed, and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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Order

It is ordered, That the respondent, John H. Dockman & Son, Inc., a corporation, its officers, agents, representatives, and employees, in the offering for sale, 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 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 assortments of candy which are used or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public;

(3) Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy, together with a device commonly called a "punchboard," for use or which may be used in the distribution of said candy to the public at retail;

(4) Furnishing to wholesale dealers and jobbers a device commonly called a "punchboard," either with the assortments of candy or separately, bearing a legend or legends or statements informing the purchaser that the candy is being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, John H. Dockman & Son, 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 and form in which it has complied with this order.

Complaint

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IN THE MATTER OF
JEROME C. CLAEYS, TRADING AS J. C. CLAEYS

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

Docket 2920. Complaint, Sept. 14, 1936—Decision, Nov. 27, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments of candy bars and push cards, under plan or arrangement by which purchaser received for his five cents one, two, three, or four bars, in accordance with particular number pushed by chance, as announced by cards' explanatory legends, and last push secured box of candy—

Sold, to wholesalers and jobbers and to retailers direct, for resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in hands of others the means of conducting lotteries in the sale of its said product, in accordance with such plan, and contrary to public policy long recognized by the common law and criminal statutes, and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled or otherwise arranged and packed to the purchasing public, as to involve a game of chance, refrain therefrom;

With result that many dealers and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such candy, thus packed and sold by him, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to induce such preferential purchase and to divert to him trade and custom from his said competitors, who do not use such methods, exclude from said trade all competitors who are unwilling to and do not use such a practice because unlawful, lessen competition therein and tend to create a monopoly thereof in him and such other distributors as do make use thereof, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not use such or an equivalent practice:

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

Mr. Henry C. Lanck and Mr. P. C. Kolinski 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 Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, hereinafter referred to as respondent, has been and is using unfair

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Complaint

methods of competition in commerce, as "commerce" is defined in said act of Congress, 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, Jerome C. Claeys, is an individual and trades under the firm name and style of J. C. Claeys, and has his principal office and place of business located at 510 Leland Avenue, South Bend, Ind. The respondent is now and for more than one year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused his said products, when so sold, to be transported from his principal place of business in the city of South Bend, Ind., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Such assortments are composed of a number of bars of candy and a small box of candy together with a device commonly called a "push card." The said bars of candy and the small box of candy are sold and distributed to the consuming public by means of said "push card" in the following manner: Sales are 5¢ each, and each purchaser is entitled to one push from said card. When a push is made from said "push card" a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing purchasers and prospective purchasers as follows:

YOU BUY A FIVE CENT CLAEYS QUALITY BAR AND GET ONE PUSH FREE
If you push out one of the Following Numbers or Last Push you can exchange
(without extra cost) the 5¢ CLAEYS QUALITY BAR for the MERCHANDISE
INDICATED

No. 44, Four 5¢ CLAEYS QUALITY BARS No. 33, Three 5¢ CLAEYS QUALITY
BARS

Numbers 5-10-20-25-30-40-50-60 Two 5¢ CLAEYS QUALITY BARS
LAST PUSH, LARGE BOX CLAEYS QUALITY CANDY.

Complaint

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The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one, two, three or four bars of candy, or the small box of candy, for the price of 5¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy 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 his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure extra bars or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use

the same or equivalent methods. The use of said methods by respondent has the tendency and capacity, because of said game of chance, 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

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 September 14, 1936, issued and served its complaint upon the respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, hereinafter referred to as respondent, charging him with the use of unfair methods of competition in commerce, as "commerce" is defined in said act of Congress. Respondent filed answer to said complaint on or about October 26, 1936, in which answer respondent admits all the material allegations of the complaint to be true and consents that the Commission may, without further evidence and without other intervening procedure, make, enter, issue, and serve upon him its findings as to the facts and conclusion based thereon and an order to cease

and desist from the methods of competition alleged in the complaint. This proceeding thereafter having regularly come on for final hearing on said complaint and on the said answer of the respondent, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the public interest, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAP^H 1. The respondent, Jerome C. Claeys, is an individual and trades under the firm name and style of J. C. Claeys, and has his principal office and place of business located at 510 Leland Avenue, South Bend, Ind. The respondent is now and for more than one year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused his said products, when so sold, to be transported from his principal place of business in the city of South Bend, Ind., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Such assortments are composed of a number of bars of candy and a small box of candy together with a device commonly called a "push card." The said bars of candy and the small box of candy are sold and distributed to the consuming public by means of said "push card" in the following manner: Sales are 5¢ each, and each purchaser is entitled to one push from said card. When a push is made from said "push card" a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the num-

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Findings

bers are not arranged in numerical sequence. The card bears statements informing purchasers and prospective purchasers as follows:

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 If you push out one of the Following Numbers or Last Push you can exchange
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 INDICATED

No. 44, Four 5¢ CLAEYS QUALITY BARS No. 33, Three 5¢ CLAEYS QUALITY
 BARS

Numbers 5-10-20-25-30-40-50-60 Two 5¢ CLAEYS QUALITY BARS
 LAST PUSH, LARGE BOX CLAEYS QUALITY CANDY.

The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one, two, three or four bars of candy, or the small box of candy, for the price of 5¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells his assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy 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 his product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure extra bars or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged,

or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraph 2 hereof, are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 issued and served

on September 14, 1936, and the answer of the respondent filed on or about October 26, 1936, admitting all the material allegations of the complaint to be true and waiving all further proceedings herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated an Act of 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, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, his agents, representatives and employees, in the offering for sale, sale and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, 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, retail dealers and wholesale dealers and jobbers packages or assortments of candy which are used, or may be used, without alternation 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 candy or candy products contained in said assortments to the public;

(3) Supplying to or placing in the hands of retail dealers and wholesale dealers and jobbers assortments of candy, together with a device commonly called a "push card" or "punchboard" for use, or which may be used, in distributing or selling said candy to the public at retail;

(4) Furnishing to retail dealers and to wholesale dealers and jobbers a device commonly called a "push card" or "punchboard," either with packages or assortments of candy 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.

It is further ordered, That the respondent, Jerome C. Claeys, an individual trading under the firm name and style of J. C. Claeys, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
QUAKER CITY CHOCOLATE & CONFECTIONERY
COMPANY

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

Docket 1773. Complaint, May 12, 1936¹—Decision, Nov. 28, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which consisted of a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of said uniform pieces who secured, by chance, pieces, the enclosed colored centers of which differed in color from those of the majority, and also together with a box of candy given without charge to purchaser of the last one of said uniform pieces—

Sold to wholesalers and jobbers said assortments, for resale to retail dealers, by whom they were exposed for sale and sold to the purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products, in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers of its said candy to buy the same in preference to that offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing the same, and by the element of chance involved in the sale thereof as aforesaid, and were thereby induced to buy its said candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to divert trade and custom from its said competitors who do not use such practices, exclude from said trade all competitors who are unwilling to and do not use such a practice as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other candy distributors as do make use thereof, and deprive the purchasing public of the benefit of free competition in trade involved, and eliminate from said trade all actual and exclude therefrom all potential competitors who do not adopt and use such or an equivalent practice:

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

¹ Amended and supplemental complaint. Original findings and order in this matter on April 3, 1934 (18 F. T. C. 269), were vacated by order reopening, etc., on May 12, 1936 See 22 F. T. C. 911.

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Mr. Henry C. Lank for the Commission.

Mr. Earl Jay Gratz, of Philadelphia, Pa., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, towit on March 11, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and

Whereas, this Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, acting in the public interest, pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Quaker City Chocolate & Confectionery Company has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at 2134 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. It is now and for several 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 the said products, when so sold, to be transported from its principal place of business in the city of Philadelphia, Pa., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

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PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers 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;

One of said assortments consist of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box 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 majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment, retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from 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 of uniform size and shape in said assortment, is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells its assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment for sale and sell said candy 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 product in accordance with the sales plan hereinabove set forth, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said

method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on March 11, 1930, issued and served its complaint in this proceeding upon the respondent, Quaker City Chocolate & Confectionery Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on May 12, 1936, the Commission issued and served its amended and supplemental complaint on the respondent, charging it with the use of unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint on March 11, 1930, as aforesaid. On June 3, 1936, the respondent filed its answer dated June 1, 1936, in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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 is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at 2134 Germantown Avenue, in the city of Philadelphia, State of Pennsylvania. It is now and for several 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 the said products, when so sold, to be transported from its principal place

of business in the city of Philadelphia, Pa., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent sells and has sold to wholesale dealers and jobbers 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;

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and a box of candy, which larger pieces of candy and the box 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 majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment, retail at the price of 1¢ each, but the purchaser who procures one of said candies having a center colored differently from 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 of uniform size and shape in said assortment, is entitled to receive and is to be given free of charge the box of candy also contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken up. The aforesaid purchasers of said candies who procure a piece of candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy or box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells its assortment, resell said assortment to retail dealers, and said retail dealers expose said assortment for sale and sell said candy 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 product in accordance

with the sales plan hereinabove set forth, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy or a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to the public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its 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 who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity to eliminate from said candy trade all

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actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy as described in paragraph 2 hereof are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Quaker City Chocolate & Confectionery Company, 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Quaker City Chocolate & Confectionery Company, its officers, representatives, agents, and employees, in the offering for sale, 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

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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 or may be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with a number of larger pieces of candy and a box of candy, which said larger pieces of candy and box of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

It is further ordered, That the respondent, 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
EVERY SALT COMPANY ¹

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

Docket 2248. Complaint, Nov. 13, 1934—Decision, Nov. 28, 1936

Where a corporation engaged in manufacture and sale of a product which consisted of salt, treated with pyroligneous liquor or acid, secured through destructive distillation of wood in the absence of air, with the addition of pepper, saltpeter, and sugar, and of caramel or burnt sugar, to simulate the appearance of a product actually treated with natural wood smoke, produce a merchantable commodity, and satisfy the expectations of the trade and consuming public—

- (a) Described said product as "Smoke Salt" or as "Every Sugar Curing Smoke Salt," and displayed and featured such name, together with word, in small letters, "Evaporated," on the containers of its said product, together with depiction of a dish and portion and slices of ham thereon; and,
- (b) Included with its directions for curing and flavoring meat, in small letters, the words "This time-saving and sure method of curing meat has been made possible by the scientific blending of the best meat salt with sugar cure, spices and concentrated smoke produced from hard wood. Every Sugar Curing Smoke Salt (appearing in large letters) does the complete job of curing and smoking meat. When used according to the following directions, it will produce meat that is properly cured with a delicious smoke taste";

Notwithstanding fact that its said "Smoke Salt" had not been, as signified to consuming public from use of such a word, smoked with natural wood smoke, nor subjected directly or at all to such smoke, and had not derived from such smoke and did not have either its qualities and properties for, or its efficacy in, curing, preserving, smoking, or flavoring meats as in the conventional smoke house or as in the operation or course of similar or equivalent processes, and could not, by virtue of the nature thereof, do the complete job of curing meats nor the curing and smoking of meats in one operation;

With capacity and tendency to mislead and deceive retail dealers into the belief that so-called "Smoke Salt" was a product subjected directly to the action and effect of, or impregnated or treated with, the smoke of burning wood during the process or course of its combustion, and that it could do the complete job of curing and smoking meat in one operation, and into pur-

¹ Through subsequent Commission action, effective date for report of compliance with order in the instant matter was extended until such time as the Commission rendered its final decisions in *Smoke Salt Products Co., et al.*, Docket 2783, and *Pennsylvania Salt Manufacturing Co., et al.*, Docket 2784, subject, however, to amendments or revocation at any time if such action appeared warranted in the discretion of the Commission, and through later Commission action relating to its aforesaid stay order, it was directed that the matter "remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matter" of the aforesaid two cases.

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chase thereof in reliance on such erroneous belief, and with result of placing in the hands of retail dealer vendees the means whereby they were enabled to and did mislead and deceive the consuming public into the belief that its said product had been smoked with natural wood smoke and that application and use thereof would do the complete job of curing and smoking meats as hereinabove set forth, and into purchase thereof in reliance on such erroneous belief, and of diverting trade to it from competitors engaged in the sale of salt, truthfully represented and described, for the purpose, among others, of curing and preserving meat, in substantial competition with it; to said competitors' substantial injury:

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

Before *Mr. Charles F. Diggs* and *Mr. Robert S. Hall*, trial examiners.

Mr. James M. Brinson for the Commission.

Putney, Twombly & Hall, 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 the Avery Salt Company, hereinafter called 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, it hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Avery Salt Company, is now and for more than a year last past has been a corporation organized, existing, and doing business under the laws of the State of West Virginia, with its principal office and place of business in the city of Scranton and State of Pennsylvania. It has been and is engaged in the manufacture of a product described as "Avery Sugar Curing Smoke Salt" and in its sale in commerce among and between the State of Pennsylvania and the various other States of the United States. It causes its said product, when sold, to be transported to purchasers thereof in and through the various other States of the United States.

It has been and is, in the course and conduct of such business, in competition with individuals, partnerships, and corporations engaged in the sale of salt or of so-called smoked or smoke salt in interstate commerce.

PAR. 2. Respondent, Avery Salt Company, has been for more than a year last past and now is, offering for sale and selling a certain product which it has described and designated, and still describes and designates, as "Smoke Salt" or "Avery Sugar Curing Smoke Salt."

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The container in which the salt of respondent is packed and marketed bears directions for use of the product. The leaflet containing the directions bears the following: "Directions for use of Avery Sugar Curing Smoke Salt" in large letters followed by:

This time saving and sure method of curing meat has been made possible by the scientific blending of the best meat salt with sugar curing spices and concentrated smoke produced from hardwood.

These words are followed by: "Avery Sugar Curing Smoke Salt" in large letters and, in smaller letters, the words "Does the complete job of curing and smoking meat."

In truth and in fact the product "Avery Sugar Curing Smoke Salt" offered for sale and sold by respondent in interstate commerce, so described and designated, has not been and is not smoked or brought in direct contact with smoke, has not been and is not treated in any way with natural wood smoke, or subjected to the action and effect of natural wood smoke. The word "Smoked" or the word "Smoke" when applied to, or used in connection with the curing of meats, has, for a considerable period of time, signified and meant, and now signifies and means to the consuming public that the product to which the word "Smoked" or "Smoke" is applied has been or is smoked with natural wood smoke, subjected to the action and effect of, or treatment or impregnation with smoke produced by wood in process of combustion.

PAR. 3. There have been for many years last past, and now are, individuals, partnerships and corporations engaged in the manufacture and sale, in commerce among and between the various States of the United States, of salt truthfully described and designated as "Smoked Salt" or "Smoke Salt."

PAR. 4. The practice of respondent, Avery Salt Company, in offering for sale or selling its product as "Avery Sugar Curing Smoke Salt" has had and has the capacity and tendency to mislead and deceive the consuming public, including wholesale and retail dealers, into the belief that the product of respondent, so described and designated, has been and is salt actually smoked with, treated or impregnated with, or subjected to the action and effect of natural wood smoke as described in paragraph 2 hereof.

The aforesaid practice of respondent also has had and has the capacity and tendency to divert trade to it from competitors selling smoked salt or smoke salt in interstate commerce truthfully designated and described.

PAR. 5. The aforesaid practices of respondent have been and are all to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce in vio-

lation 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."

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 13th day of November 1934, issued and thereafter caused to be served upon respondent, Avery Salt Company, its complaint in this proceeding, charging it with the use of unfair method of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, a stipulation subject to the approval of the Federal Trade Commission, and which hereby is approved, was introduced by James M. Brinson, counsel for the Commission, and Henry B. Twombly, counsel for the respondent, before Charles F. Diggs, an examiner theretofore duly designated by it whereby and wherein there were adopted and accepted as testimony and other evidence for the purpose of this proceeding all testimony taken and evidence received of a general character in the matters of Morton Salt Company, Docket 2150, Jefferson Island Salt Company, Docket 2151, and Myles Salt Company, Docket 2152. Thereupon further testimony and evidence in support of the allegations of the complaint were introduced by James M. Brinson, counsel for the Commission, and in opposition thereto by Henry B. Twombly, counsel for respondent.

Further testimony and evidence were introduced by said counsel for respondent in opposition to the allegations of the complaint before Robert S. Hall, an examiner of the Federal Trade Commission duly designated by it as a substitute for and in place of the said Charles F. Diggs because of an emergency requiring such action. This stipulation, testimony and evidence were reduced to writing and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and evidence including the testimony and evidence admitted by the stipulation aforesaid, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Avery Salt Company is now and for more than a year last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia. It has its principal office and place of business in the city of Scranton in the State of Pennsylvania, and is now, and for more than a year last past has been, engaged in the manufacture of a product described and designated as "Avery Sugar Curing Smoke Salt," and in the sale of such product in commerce between and among the State of Pennsylvania and the various other States of the United States. It causes such product, when sold, to be transported from its said place of business to purchasers in and through the various other States of the United States than the said State of Pennsylvania.

In the course and conduct of its said business, respondent Avery Salt Company has been and is in substantial competition with individuals, partnerships, and corporations engaged in the sale of salt in interstate commerce.

PAR. 2. Respondent Avery Salt Company has been for more than a year last past and now is offering for sale and selling to retail dealers and through them to their customers, the consuming public, in the commerce aforesaid the product mentioned in paragraph 1 in containers on or around which are labels bearing in large and conspicuous letters the words "Avery Smoke Salt." Beneath the word "Avery" appears in small letters the word "Evaporated," while under the word "Evaporated" are the words "Sugar Curing." Between the words "Sugar Curing" and the words "Smoke Salt," there is a pictorial representation of a portion of ham together with several slices on a platter or dish. There also appears the following in large letters "Easier—Quicker—Surer" followed by the words "Avery Salt Company, Avery Island, La., a Subsidiary of International Salt Company, New York." On the opposite side of the container, there are directions for the application or use of the salt in curing and flavoring meat. They are entitled "Avery Sugar Curing Smoke Salt" and are expressed in large and conspicuous letters. There also appears in small and inconspicuous letters the following:

This time-saving and sure method of curing meat has been made possible by the scientific blending of the best meat salt with sugar cure, spices and concentrated smoke produced from hard wood. Avery Sugar Curing Smoke Salt (appearing in large letters) does the complete job of curing and smoking meat. When used according to the following directions, it will produce meat that is properly cured with a delicious smoke taste.

In truth and in fact, wood smoke, as commonly understood by the public is the product or result of the incomplete or imperfect com-

bustion of wood, in the presence of air. The word "Smoke," and the word "Smoked" used in connection with salt offered for sale, distributed, or sold, for curing preserving, smoking, or flavoring meats, or any other word or words used in such connection implying smoke, or use of smoke, have for a considerable period of time signified and meant and now signify and mean, to the consuming public, that the product to which the word "Smoke," or "Smoked" or any word, or words, implying smoke or use of smoke is applied, has been or is smoked with natural wood smoke, that is, subjected directly to the action and effect of, or to treatment or impregnation with, smoke produced by burning wood, during the process or course of its combustion, sufficiently to acquire from such source alone smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

The product which respondent offers for sale, distributes and sells to retail dealers, described and designated as "Smoke Salt" has not been and is not smoked with natural wood smoke. It has not been and is not subjected directly or at all to such smoke, that is, smoke produced by burning wood during the process or course of its combustion. It has not acquired or derived from such smoke, and has not had and does not have either its qualities and properties for, or its efficacy in curing, preserving, smoking or flavoring meats, as in the conventional smokehouse, or as in the operation or course of similar or equivalent processes. It can do neither the complete job of curing and smoking meats, nor the curing and smoking of meats in one operation. The product of respondent consists of salt, treated with a liquid known as pyroligneous liquor or acid, to which are added pepper, saltpeter, sugar and caramel or burnt sugar.

Pyroligneous liquor or acid is manufactured by a process known and described as the destructive distillation of wood. This process requires the absence of air for its efficiency in recovery of the maximum amount of the constituents or products of the wood. As a result of this necessity, air is excluded from the retort in which the decomposition of the wood is accomplished by the external application of heat. The only opening in the retort when the process is in operation is that leading into the condensing apparatus. It affords no entrance for air but, on the contrary, provides an exit through which air present in the retort and in the wood is expelled as soon as the vapors or fumes, and other material or products in the wood commence their passage into the condensing apparatus. This absence of air and consequently of combustion effects in the course of the destructive distillation recovery of all condensable material resulting from decomposition of the wood. The distillate so produced, pyro-

ligneous liquor, contains therefore many substances which would be destroyed in the course of the combustion or incomplete or imperfect combustion of wood, or would escape into the atmosphere, and which have not been discovered or identified in the smoke produced by burning wood in the process or course of its combustion. The application of respondent's product, treated with such pyroligneous liquor, to meats, therefore, necessarily subjects them to an entirely different treatment under different atmospheric and other conditions than does the conventional smoke house method, or equivalent processes in which natural wood smoke is employed.

A product exposed to the dense natural wood smoke of the smoke house or its equivalent is subjected to conditions which the application of pyroligneous liquor or acid does not and cannot supply and salt treated with such liquor or acid also fails to supply such conditions. Pyroligneous liquor or acid subjects the product with which it is treated and such product subjects meats to which it is applied to the action and effect of numerous substances never found in smoke and which do not and cannot serve as a substitute for the conditions and effects of natural wood smoke operating in the smoke house or its equivalent processes. This fact is emphasized by the practice of respondent, in adding caramel or burnt sugar, as an ingredient, to its product, in order to produce the honey brown color which the trade and public associates with products subjected to or impregnated or treated with the said natural wood smoke. In other words, although using the product of destructive distillation, which it designates as condensed smoke, for the treatment of its salt, it is necessary for respondent to resort to caramel or burnt sugar as a coloring agent, in order to simulate the appearance of a product actually treated with natural wood smoke and thereby to produce a merchantable commodity, which can, in appearance, satisfy the expectations of the trade and consuming public.

PAR. 3. There are now and for several years last past have been individuals, partnerships and corporations engaged in the sale of salt truthfully represented and described, in interstate commerce for the purpose, among others, of curing and preserving meat in substantial competition with respondent.

PAR. 4. The above and foregoing practices of respondent, described in paragraph 2 hereof have had and have and each of them has had and has the capacity and tendency to mislead and deceive retail dealers, into the belief that the so-called smoke salt has been and is a product subjected directly to the action and effect of, or impregnated or treated with, the smoke of burning wood during

the process or course of its combustion and that such product can do the complete job of curing and smoking meat in one operation and into the purchase of such product in reliance on such erroneous belief.

The practices aforesaid have placed and do place in the hands of retail dealers to whom respondent sells its product the means whereby they have been and are enabled to mislead and deceive, have misled and deceived, and do mislead and deceive the consuming public into the belief that the product of respondent has been smoked with natural wood smoke as described in paragraph 2 hereof, and that application and use of such product will do the complete job of curing and smoking meats in one operation, and into the purchase of such product in reliance on such erroneous belief.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert and each of them has diverted and does divert trade to respondent from competitors mentioned in paragraph 3 hereof. Such practices have done and are doing and each of them has done and is doing substantial injury to such competitors so engaged in substantial competition with respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, Avery Salt Company, 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 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, a stipulation as to certain testimony and evidence, testimony and evidence taken before Charles F. Diggs and also before Robert S. Hall, examiners of the Federal Trade Commission theretofore duly designated by it for such purpose in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by James M. Brinson, counsel for the Commission, and by Henry B. Twombly, counsel for respondent, and the Commission having made its report stating its findings as to the facts and its conclusion that said respondent has violated the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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It is ordered, That the respondent Avery Salt Company its officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of its salt in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the word "smoke", or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

(2) Representing that its product described or designated as "Avery Sugar Curing Smoke Salt" does the complete job of curing and smoking meat, or that meat by treatment with such product acquires therefrom the same taste or flavor or other properties or effects, as meat acquires from treatment with salt and subsequent exposure to the smoke of burning wood during the process and course of its combustion.

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

IN THE MATTER OF
AMBUR DISTILLERIES, INC.

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

Docket 2481. Complaint, June 29, 1935—Decision, Nov. 28, 1936

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in use of a still for producing gin through process of rectification, whereby alcohol purchased, but not produced, by it was redistilled over juniper berries and other aromatics, and in selling its aforesaid various products, in substantial competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages, and in sale thereof, and with those engaged in purchasing, rectifying, blending, and bottling such products and selling the same among the various States and in the District of Columbia, and including among aforesaid competitors those who manufacture and distill from mash, wort, or wash, as commonly understood, their whiskies and other spirituous beverages and truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade name, on their stationery and advertising, and on the labels of the bottles in which they sell and ship their products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not thus use aforesaid words as a part of their corporate or trade names, etc., as above set forth—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished the same with the means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies, etc., thus bottled, labeled, sold, and transported by it, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash, as long definitely understood from word "Distilleries" by trade and ultimate purchasing public as meaning places where such liquors are made by process of original and continuous distillation as above set forth, and through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, for purchase of bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as above set forth, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies, etc., bottled and sold by it, and diverting thereby trade to it from its competitors who do not, by their corporate or trade names, misrepresent that they are manufacturers by distillation, as above set

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forth, of their products; to the substantial injury of substantial competition in commerce:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Walter Drew, of Milwaukee, Wis., 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 Ambur Distilleries, 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 the 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 is a corporation organized, existing, and doing business under the laws of the State of Wisconsin, with its principal office and place of business in the city of Milwaukee, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof

in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "Distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such

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products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the 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," 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 June 29, 1935, issued, and on July 2, 1935, served its complaint in this proceeding upon respondent, Ambur Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other

intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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 is a corporation organized, existing, and doing business under the laws of the State of Wisconsin, with its principal office and place of business at 523 North Jackson Street, in the city of Milwaukee, in the said State. It is now, and for more than one year last past has been engaged under basic permit from the United States Government, designated as R-405, in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol pur-

chased, but not produced, by respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller as defined by Section 3347 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "Distilleries" when used in connection with the liquor industry and the products thereof has had, and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid by the use of the word "Distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash as aforesaid, whiskies, gins, and other spirituous beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling," as a part of their corporate or trade names, and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a

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part of their corporate or trade names, or on their stationery or advertising, or on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to, and has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to, and has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. Because existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. L. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may call such resulting product "distilled gin" and require that the labels state who distilled it, the Commission has excepted gins so produced by respondent from the application of its order.

CONCLUSION

The aforesaid acts and practices of the respondent, Ambur Distilleries, Inc., 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein, dated October 23, 1936, by respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its

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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, Ambur Distilleries, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of whiskies, gins, and other spirituous beverages in interstate commerce or in the District of Columbia (except gins by it produced through redistillation of tax-paid aromatics), do forthwith cease and desist from representing:

Through the use of the word "Distilleries" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places wherein such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, unless and until respondent shall actually own, operate, or control such a place or places.

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

IN THE MATTER OF
KROEKEL-OETINGER, INC.

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

Docket 2763. Complaint, Apr. 13, 1936—Decision, Nov. 28, 1936

Where a corporation engaged in the manufacture and sale of candy, including assortments, which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and consisted of a number of penny pieces of uniform size and shape, together with a number of larger pieces to be given as prizes to those purchasers of said uniform pieces who secured, by chance, pieces, the enclosed colored centers of which differed in color from those of the majority—

Sold to wholesalers and retailers direct, for resale to the purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products, in accordance with such plan, as a means of inducing purchasers thereof to buy its said product, thus sold, in preference to candy offered and sold by competitors; contrary to public policy, long recognized by the common law and criminal statutes, and to the established public policy of the United States Government, and in competition with many who, unwilling to offer or sell their candy so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to divert to it trade and custom from its said competitors who do not use such practices, exclude from said trade all competitors who are unwilling to and do not use such a practice because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other candy distributors as do make use thereof, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent practice:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. David H. Kinley, of Philadelphia, Pa., for respondent.

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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 Kroekel-Oetinger, 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 of Congress, 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, Kroekel-Oetinger, Inc., is a corporation organized and operating under the laws of the State of Pennsylvania, with its principal office and place of business located at No. 4655 Stenton Avenue, Philadelphia, Pa. Respondent is now and for one year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Philadelphia, Pa., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for one year last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent sells and has sold, since on or about January 15, 1936, to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of candy 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 purchasers of said pieces of candy of uniform size and shape in the following manner:

The majority of the said pieces of candy of uniform size and shape in said assortment have centers of the same color, but a small number of said pieces of candy have centers of a different color, the said pieces of candy of uniform size and shape retail at the price of 1¢

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each, but the purchasers who procure one of the said candies having a center colored differently from the majority of said candies is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge a still larger piece of candy also contained in said assortment. The color of the center of the said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The aforesaid purchasers of said candies who procure a candy having a center colored different from the majority of said pieces of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortment for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public

so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

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 April 13, 1936, issued and served its complaint in this proceeding upon the respondent, Kroekel-Oetinger, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 4, 1936,

the respondent filed its answer dated June 2, 1936, in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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, Kroekel-Oetinger, Inc., is a corporation organized and operating under the laws of the State of Pennsylvania, with its principal office and place of business located at 4655 Stenton Avenue, Philadelphia, Pa. Respondent is now, and for one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Philadelphia, Pa., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy 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, respondent sells and has sold, since on or about January 15, 1936, to wholesale and retail dealers, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of candy 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

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given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The majority of the said pieces of candy of uniform size and shape in said assortment have centers of the same color, but a small number of said pieces of candy have centers of a different color; the said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies having a center colored differently from the majority of said candies is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive, and is to be given free of charge, a still larger piece of candy also contained in said assortment. The color of the center of the said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The aforesaid purchasers of said candies, who procure a piece of candy having a center colored differently from the majority of said pieces of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortment for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding com-

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petitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent method; to exclude from said candy trade all competitors who are unwilling to and do not use the same or an equivalent method because the same is unlawful; 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 the respondent has the tendency and capacity 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.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy, as described in paragraph 2 hereof, are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Kroekel-Oettinger, Inc., 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

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Kroekel-Oetinger, Inc., its officers, representatives, agents, and employees, in the offering for sale, 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 or may be 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 assortment to the public;

(3) Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with a number of 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.

It is further ordered, That the respondent, 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.

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MEMORANDUM

The Commission, as of the same date, made similar findings and orders in two other candy lottery cases, as follows:

SOUTH BEND DISTRIBUTING Co., Inc., Docket 2871—Complaint, July 3, 1936.—Selling to wholesalers and jobbers, on the part of respondent manufacturer, with principal office and place of business at South Bend, Ind., assortments of candy bars with push cards, for sale under a plan by which the purchaser receives for the five cents charged, in accordance with the card's explanatory legend and number pushed by chance, one, two, three, or four bars of candy, with purchaser of last disk on the card receiving, free, the box of candy included. *Mr. Henry C. Lank* and *Mr. P. C. Kolinski* for the Commission. *Jones, Obenchain & Butler*, of South Bend, Ind., for respondent.

QUEEN ANNE CANDY Co., Docket 2890—Complaint, August 7, 1936.—Selling, on the part of respondent manufacturer, with principal office and place of business in Seattle, assortments of boxes of chocolate candy, value of which exceeds five cents each, together with other articles of merchandise and a punchboard, for sale under a plan by which five-cent purchaser receives for his money, in accordance with the number punched by chance, a box of candy or nothing other than the privilege of making a selection, with purchaser of last punch on the board receiving article of merchandise. Before *Mr. Henry M. White*, trial examiner. *Mr. Henry C. Lank* and *Mr. P. C. Kolinski* for the Commission.

Syllabus

IN THE MATTER OF
NATIONAL GRAVE VAULT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2324. Complaint, Mar. 12, 1935—Decision, Nov. 30, 1936.

Where a corporation engaged in the manufacture of air sealed and mechanically sealed end closing metal burial vaults, and in the sale thereof to jobbers, funeral directors and undertakers—

- (a) Represented, in periodicals of wide interstate circulation and in booklets, circulars, etc., and through photographs, testimonials, and other advertising media, that its said vaults were made of rust resisting metal and were waterproof, verminproof, and airtight, and that they were rust proof and would not corrode, and had been tested and proved by time as permanently sealed, that no earth load could crush through the top, and they afforded full protection to the contents against water, earth and nature's ruthless elements; and
- (b) Made use of certificates of warranty or guarantee in connection with the sale and offer of its said vaults which guaranteed the same to be vermin and waterproof for fifty years and undertook therein to replace any vault without cost in the event of damage to the contents by vermin, water, or other elements admitted due to rust, corrosion, etc.;

The facts being that, while its said vaults were equal to the standard comparable product made by the industry, and not inferior in metal or method of construction to those used by reputable and responsible members thereof, but were made with great care by skilled workmen, of the highest grade and quality of metals obtainable by it for the manufacture of such vaults, impervious and impenetrable by moisture, vermin, and water during the life of the metals, such metals were not rust or corrosion resistant to the extent that they would never rust or corrode after burial, and, once rusted or corroded to a certain extent during a period of years, they would crumble and disintegrate just as do, ultimately, all other materials; corrosive qualities, present in all soils, vary greatly, so that, while in many sections throughout the United States in which soil corrosion is not a problem, a twelve gauge metal vault buried would resist penetration by corrosion for more than one hundred years, in other soils its said vaults would pit through and cease to be waterproof in from eight to ten years; conjunction of conditions, which does not always exist, must obtain in the case of said air sealed vaults in order to provide protection from entering water; its vaults and materials from which made had not been tested under ground for the full period of fifty years, disinterment is rare and it had rarely been called upon to replace its said vaults;

With capacity and tendency, as result of such misleading acts and practices, to induce the public to purchase and use its said vaults in the belief that

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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said statements and representations, which were each and all to the prejudice of the public, were true, and to divert unfairly trade to it from its competitors engaged in sale and distribution of metal, stone, concrete, cement and other burial vaults in and between the various States:

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

Mr. E. J. Hornibrook for the Commission.

Waite, Schindel & Bayless, of Cincinnati, Ohio, for respondent.

COMPLAINT

Acting in the public interest and pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the National Grave Vault Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of an Act of Congress approved June 16, 1933, known and designated 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, states its charges in that respect as follows:

Count 1

PARAGRAPH 1. The respondent, the National Grave Vault Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Galion in said State. It is now, and for several years last past, has been engaged in the business of manufacturing and selling metal grave vaults used to encase a coffin in the burial of the dead, to purchasers thereof, many of whom reside outside the State of Ohio, and when orders are received therefor, they are filled by respondent by shipping the same from the said city of Galion, State of Ohio, into and through other States of the United States to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of its said business, respondent is in competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone, concrete, cement, and other grave vaults between and among various States of the United States.

PAR. 3. Respondent sells and ships said grave vaults, as aforesaid, to jobbers, funeral directors, and undertakers, the last two of which

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sell the same to ultimate purchasers thereof for use in the burial of their dead.

PAR. 4. (A) In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which is circulated among its customers and prospective customers residing in the several States of the United States and which respondent's said customers use and are authorized by respondent to use in the sale and promotion of the sale of its said vaults, and by and through its agents and salesmen, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made:

That said vaults when delivered to the consuming public are water-proof, verminproof and airtight, and will remain so under burial conditions for a period of fifty years; that when properly closed they will protect their contents from vermin, water and other elements from external sources; that they are rustproof and will not corrode; that the remains, if encased in said vaults, are fully protected against water, earth, and nature's ruthless elements; that no earth load can crush through the top; that they have been tested and proven by time that they are permanently sealed.

(B) Respondent issues with each vault for delivery to ultimate purchasers thereof, and they are so delivered, a written purported warranty which in the case of its Pyramid Grave Vault provides as follows:

Warrants that each Pyramid Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be airtight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If within fifty years from the date of interment, the contents of any Pyramid Grave Vault are damaged by vermin, water or other elements admitted because of the failure of the vault due to rust, corrosion, defective materials or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

In the case of the National Purity Metal Grave Vault, the warranty reads in substance as follows:

Warrants that every National Purity Metal Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be airtight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If at any time after date of interment the contents of any National Purity Metal Grave Vault are damaged by water or other elements admitted because

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of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

PAR. 5. The statements and representations described in Subdivision (A) of the preceding paragraph are false and misleading in that respondent's said grave vaults are not always waterproof, verminproof and airtight at the time of sale to ultimate purchasers thereof and that they will not always remain so under burial conditions; that respondent's said vaults when buried underground are not impervious to water or corrosion or rust; the materials of which respondent's said vaults are made are not rust resisting or corrosion resisting; respondent's said vaults are not permanently sealed under burial conditions; the casket and remains are not always fully protected by respondent's said vaults against water, earth and nature's ruthless elements under burial conditions. There is a vast difference in the corrosive properties of soils throughout the United States and the District of Columbia; in some soils, respondent's said vaults will corrode and pit in a period of from three to ten years and in others from ten to twenty years. In many soils respondent's said vaults will corrode and pit so as to let water in them; in many instances they will corrode and rust so as to cave in or collapse; respondent's said vaults have never been tested as to their corroding over a period of fifty years, nor has the metal of which they are made been so tested; respondent's said vaults when buried underground are not airtight or waterproof or verminproof and will, and often do, permit air, water and vermin to enter therein. Either air or water or vermin entering respondent's vaults, when used for burial purposes, promote and cause disintegration of the coffin and body encased in said vaults. Water often enters the graves of the dead. The mechanism provided by respondent for sealing their said vaults will not at all times prevent the entrance of water into said vaults.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false, misleading, and deceptive in that the terms "waterproof" and "airtight" as used by respondent as aforesaid mean to the ultimate purchaser thereof a watertight, airtight vault, a vault which will not permit water or air to enter the same and that will endure as such under burial conditions for a period of fifty or more years. The respondent's said vaults are not waterproof or airtight as the terms are understood by ultimate purchasers thereof. Water or air may seep into or enter the said vaults through the joints, holes, fastenings, or flanges thereof, or through pit holes due to rust or corrosion or due to collapse or bending of the said vaults.

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These said purported warranties contain a clause in which respondent offers to replace without cost to the purchaser any such vault failing to meet the warranty as to being waterproof or airtight because of failure due to rust, corrosion, defective material, or workmanship. The exhumation of bodies after burial is so rare as to make these certificates of warranty worthless to a vast majority of purchasers of these vaults for the reason that no opportunity is afforded them in which to ascertain whether such vaults are or have been airtight or waterproof. These said purported warranties are not warranties, but are merely sales persuaders under the terms of which respondent will rarely, if ever, be called upon to replace said vaults. It is false and misleading for respondent to call them warranties or to issue them at all.

PAR. 6. Each and all of the said false and misleading statements and representations used by respondent as set out in paragraph 4 hereof have and have had the capacity and tendency to induce the public to purchase and use respondent's said grave vaults in the belief that they are true, and have and have had the tendency and capacity to divert trade from said competitors of respondent.

PAR. 7. The acts and practices of respondent above set forth are all to the prejudice of the public and to 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."

Count 2

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Galion, in said State. Respondent is now and, for several years last past, has been engaged in the business of manufacturing, selling, and distributing metal grave vaults, used to encase a coffin in the burial of the dead, to purchasers thereof, located at points in the State of Ohio and at points in various other 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 Galion, Ohio, to the purchasers thereof in the State of Ohio and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by the said respondent in said products in the State of Ohio and between and among the States of the United States and in the District of Columbia.

PAR. 2. AS grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts, and relies upon all matters and things set out in paragraphs 2 to 7, inclusive, of count 1 hereof to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph.

PAR. 3. On November 4, 1933, under and pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued, and approved a Code of Fair Competition for the Funeral Supply Industry, which became effective on the tenth day thereafter. The respondent herein was a party to and signatory of such Code of Fair Competition, and such Code is now in full force and effect as to this respondent.

The said National Industrial Recovery Act, section (3), paragraph (B) provides:

If 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 supervision thereof. Any violation of such standards in transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition of 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.

In Article IX, under the heading of "Trade Practice," of said Code appears the following:

1. The following practices constitute unfair methods of competition and are prohibited: To resort to or indulge in practices which are prejudicial to the public interest such as

Misbranding,
Misrepresentation in branding,
Labeling,
Selling, and
Advertising.

(W) Nothing in this Code shall limit the effect of any adjudication by the courts or holdings by the Federal Trade Commission on complaint, finding and order, that any practice or method is unfair providing that such adjudication herewith is not inconsistent of any provision of the Act or of this Code.

Notwithstanding the said provisions of said Code of Fair Competition respondent has continued to and does, use said methods of competition hereinabove alleged and described, and has resorted to or indulged in the practice of misrepresentation in branding, labeling, selling and advertising its said vaults in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts and practices of the respondent are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition for the said Funeral Supply Industry of the United States. Such violation

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of such standards in the aforesaid transactions in interstate commerce and in other transactions which affect interstate commerce in the manner set forth above are in violation of Section (3) of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

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 12th day of March, A. D. 1935, issued and served its complaint in this proceeding upon respondent, National Grave Vault Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and respondent by which it was agreed that subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto. It was further agreed that said Commission might proceed upon such statement of facts, including inferences drawn from said stipulated facts, to issue its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission, and approved by it. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto, and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Grave Vault Company, is and has been since November 4, 1912, a corporation duly organized and existing under the laws of the State of Ohio, with its factory and

principal place of business located in the city of Galion, in the said State.

Respondent is now and for the past twenty-three years has been engaged in the business of manufacturing and selling metal burial vaults; said vaults are intended to be and are actually used to encase or enclose coffins or caskets in the burial of the human dead.

Respondent sells and ships its vaults to jobbers, funeral directors, and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of their dead.

Respondent now sells and ships and has so sold and shipped its vaults to purchasers thereof to be used in the State of Ohio and other States of the United States; when orders are received by it therefor, they are filled by causing said vaults to be shipped from the said Galion in the State of Ohio, into and through other States of the United States to the respective places of business or the residences of such purchasers.

PAR. 2. In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which are circulated among its customers and prospective customers residing in the several States of the United States, and which respondent's said customers use and are authorized by respondent to use in the sale and in the promotion of the sale of its said vaults, respondent has made the following claims, statements, and representations as to its vaults, to wit:

When properly closed, they will protect their contents from water, vermin, and other elements from external sources.

Said vaults are waterproof, verminproof, and airtight.

The remains, if encased in its vaults, are fully protected against water, earth and nature's ruthless elements.

They have been tested and proven by time that they are permanently sealed.

PAR. 3. In and through said media respondent prior to and in 1933 but not since then, made the following statement and representation as to its vaults, to wit:

Its vaults are rust-proof and will not corrode.

PAR. 4. In and through said media respondent, prior to and in 1934, but not since then, made the following general statement and representation as to its vaults, to wit:

No earth load can crush through the top.

PAR. 5. Respondent makes and sells, as aforesaid, two types of air-seal vaults, which are called the "Pyramid" and "National Purity."

PAR. 6. Respondent has issued and now issues with each Pyramid grave vault, and with each National Purity metal grave vault, for

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delivery to ultimate purchasers thereof, and they are usually so delivered, written certificates of warranty in words and figures as follows:

THE NATIONAL GRAVE VAULT COMPANY, GALION, OHIO

WARRANTS; That each Pyramid Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be air-tight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If, within fifty years from the date of interment, the contents of any Pyramid grave vault are damaged by vermin, water or other elements admitted because of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damages to the casket or contents due to the dehydration of the remains.

This warranty will become effective upon being dated and countersigned by the funeral director at the time of the sale of said vault.

IN WITNESS WHEREOF, the National Grave Vault Company has caused its name to be hereunto subscribed by its President, duly authorized by the Board of Directors.

THE NATIONAL GRAVE VAULT COMPANY
By _____, *President.*

THE NATIONAL GRAVE VAULT COMPANY

Galion, Ohio

WARRANTS: That every National Purity Metal Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be air-tight and water-proof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If at any time after date of interment the contents of any National Purity Metal Grave Vault are damaged by water or other elements admitted because of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

This warranty will become effective upon being dated and countersigned by the funeral director at the time of the sale of said vault.

IN WITNESS WHEREOF, The National Grave Vault Company has caused its name to be hereunto subscribed by its President, duly authorized by the Board of Directors.

THE NATIONAL GRAVE VAULT COMPANY
By _____ *President.*

PAR. 7. Ferrous metals are used by respondent in the manufacture of its said burial vaults; they are called Armco Ingot Iron and Copper Bearing Steel, and are manufactured by the American Rolling Mill

Company of Middletown, Ohio, and the American Sheet & Tinplate Company of Pittsburgh, Pa., respectively.

These metals are purchased by the respondent in sheets of extra dimensions of 12 United States Standard Gauge and heavier thicknesses, specially processed and rolled for the purpose of the manufacture of burial vaults. The cost of these metals is considerably higher than the cost of ordinary commercial steel.

These metals are the highest grade and quality of metals that are now in the market in the United States, which can be obtained by respondent for the purpose of manufacture of its burial vaults.

These metals, purchased by the respondent, and used in the manufacture of said vaults, are highly refined grades of steel, carefully made under the best, modern scientifically controlled steel making processes; they are high quality metals made as carefully, accurately and thoroughly as they can be made by exact control of furnacing operations to make the best metal that will resist, but not prevent corrosion in the sense that the high purity and quality of the metal tends to retard and slow the rate of corrosion and tends to increase its durability under ground for a longer period of time than if the impurities were not removed from the metal.

Each of the above steel manufacturing companies, from whom respondent purchases these metals, represents in its advertising and otherwise to the respondent that said metals are rust-resisting. They are manufacturers of recognized responsibility and integrity. These companies make rigid inspection and testing of each sheet of said metals before they are shipped to the respondent.

These metals are by their very nature, impervious and impenetrable by air, moisture, vermin and water, and will exclude them from seeping or going through or between any pores or molecules of said metals during the life of said metals, or has penetrated through the metal from rust or corrosion.

These metals are not rustproof or corrosionproof, but will rust and corrode after they are buried underground. They are not rust-resisting or corrosion-resisting to the extent or degree that they will never rust or corrode after burial underground. When they have rusted and corroded to a certain degree and extent during the period of years after burial underground, they will crumble and disintegrate just as all other materials will ultimately decay and disintegrate.

Respondent's said vaults are manufactured with great care by skilled workmen.

PAR. 8. Respondent's vaults are constructed on the air seal principle. The vault consists of two parts, (1) a pan or base, and (2) a dome (hood or top).

The outside measurements of said vault are: length $89\frac{5}{8}$ inches; width $33\frac{5}{8}$ inches; and height $28\frac{1}{8}$ inches. It weighs empty and without a casket in it 410 pounds. Its inside dimensions are: length 86 inches; width 30 inches; side height $19\frac{5}{8}$ inches; center height $24\frac{1}{2}$ inches above the top of the pan.

The entire dome consists of three pieces, two ends and one piece which forms the rounded top and both sides. The ends are electrically welded from the inside and from the outside; so as to then make the dome airtight and watertight in the sense that no air or water can then get through the metal or welds of the top, sides and ends of the dome from the outside of the dome to the inside of the dome. Of course, water and air can go in and out of the dome from the bottom of it, as the dome itself has no bottom to it.

The pan is made of one piece of steel and the ends are electrically welded. The pan is flat on top and the four edges are turned down so as to raise the top of the pan $3\frac{1}{4}$ inches above the plane of the lower surface of the flange as it rests on the ground or support. The edges of the pan are turned inward approximately $1\frac{1}{4}$ inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of two square feet and five square inches. The entire base resembles an inverted pan. At each of the four corners of the pan is a hole, pierced through it near its top edge. Circulation of air from the hollow space under the pan into the hood is provided by these holes, thereby making one single column of air.

Projecting one inch above the top of the pan are four small raised portions or bosses or casket rests, which support the bottom of the casket when it is placed in the vault. Thus, the bottom of the casket is raised $4\frac{1}{4}$ inches above the bottom of the grave or grave floor. This change was made March 30, 1933.

The bottom rim or flange of the hood does not rest on this flange of the pan as it is turned inward, but the bottom edge of the dome is turned inward and forms an additional flange, which supports to some extent the dome of the vault.

The principles of construction of respondent's air seal vault are such that it operates on the principle of the diving bell, by which the pressure of the confined air in the inside of the inverted airtight and watertight dome, when the lower edge of the dome is covered all around with outside water, resists the pressure of the water head to cause the surface of the water level to rise within the dome above the lower edge of the dome. The dome of this vault is sealed when the water level in the ground completely surrounds the edge or rim of the dome on its four sides. The air within the vault is not sealed until then.

As the water level rises in the ground surrounding the vault, its pressure forces the air from the empty space underneath the raised portion of the pan, through the holes at each corner of the pan, into the hood where it is added to the air within the dome, thereby increasing the pressure and resistance of the air to the pressure of the water level in the ground, and so adding to the effectiveness of the operation of the air seal principle of the vault.

Water and air will go in and out of the space underneath the raised portion of the pan at the time of its burial underground. Air will go in and out of the open bottom of the dome of the vault, except when the principle of the air seal vault is in operation, to wit, when the edges on the four sides of the dome are sealed all around by the water head in the ground rising above the edges of the dome on its four sides. The water level will rise upwards within the dome, to the extent that it is not resisted by the pressure of the confined air within the dome.

Respondent's air seal vault is not airtight as a vault when the air seal principle is not in operation, as air from the ground can enter the vault through the open joint where the dome rests on the pan and also through the four holes near the top of the pan, because of the absence of water sealing the lower edge of the dome on its four sides. When the air seal principle is in operation because of the presence of water above the lower edge of the dome on the four sides of the vault, then the vault is airtight.

The dome of each air seal burial vault manufactured by respondent is tested, before it is shipped by submerging in water the dome in an upright position without the pan being placed under it. The dome containing air inside it is forced down into the water by mechanical apparatus similar to a baling press. It operates on a screw and exerts pressure on top of the dome and thereby forces the dome under the water. The pressure necessary and actually used in order to put the dome down so that the top of the dome is $27\frac{1}{4}$ inches under the water and thus submerged is two and one-half tons or 5,000 pounds. This pressure is applied so as to equally distribute it over the top of the vault.

The purpose of making this test is to find any defect in the material of the dome or in the welds in the dome. If any air bubbles rise to the surface of the water, it indicates that air is escaping from the inside of the dome through a hole in the material or a defect in the welding; then the dome so found to be defective would be returned to the production line and this defect would be repaired and the dome would be given a second test. If no air bubbles rise to the surface of the water, it indicates that no air is escaping from the inside of the dome and

that the dome is airtight; then the dome is approved for shipment, and it is waterproof and airtight at the time of the shipment. No vault is shipped by respondent until the dome of said vault has been so tested and proved to have no defect in its material or in its welds, and the dome is waterproof and airtight at the time of shipment. No test is made of the material or welds of the pan.

According to the recognized principles of mechanical engineering applied in the construction of respondent's air seal vault, the confined air within the airtight dome of respondent's air seal vault buried level on the bottom of the grave containing a corpse in an ordinary casket, or one not hermetically sealed estimated at 5 cubic feet will resist the pressure of a water column in the ground 5 feet or 60 inches above the lower edge of the hood, and under such conditions the water in the vault will rise only to the top of the pan or one inch below the rests for the bottom of the casket. It would require a water column in the ground 6.1 feet or 73.2 inches above the lower edge of the hood for the water in the vault to rise so as to submerge the bottom of the casket.

In some instances under actual burial conditions, the results outlined in the preceding paragraph are not obtained. The said vaults when buried underground are not impervious to corrosion or rust. Respondent's vaults are made of materials which will corrode and rust and if there is water in the grave at the time that such metal has sufficiently corroded or rusted to cause holes or punctures through the metal, it will permit the entrance of water through holes occasioned by such rust or corrosion; there is a vast difference in the corrosive property of soils throughout the United States; in some instances said vaults will corrode and rust so as to cave in and collapse. Respondent's said vaults have never been tested for corrosion for a period of fifty years nor has the metal of which they are made been so tested; respondent's said vaults when buried underground have, and often do permit air, vermin, and water to enter them. Water entering respondent's said vaults to such a height as to touch the casket has a tendency to promote, and in some instances cause, disintegration of the body and casket in said vault. Water often enters the graves of the dead. In many cemeteries of the United States water rises in some graves to a depth of six feet. The mechanical principles provided by respondent for sealing said air seal vaults will not under all burial conditions prevent the entrance of water into said vaults to such a height as to damage the coffin and body placed therein.

In order for said vaults to provide protection for the casket and body placed therein from the effect of water entering said air seal

vaults of the respondent from the grave, they must be buried and remain buried under conditions which are:

No. 1. The hood of the air seal vault must not be defective and the metal and welds must be airtight.

No. 2. The vault should be buried level.

No. 3. The vault should be buried on the surface of the bottom of the grave and have no earth or other material which occupies the empty space underneath the pan.

No. 4. There should be no change in temperature after its burial.

No. 5. There should be no change in barometric pressure after its burial.

These said conditions do not obtain in all cases of burial where said vaults are used.

Condition No. 1 is essential for the operation of the air seal principle. A change in conditions Nos. 2 or 3 affect the air seal vault unfavorably to a more or less degree in that they reduce the amount of confined air within the dome and also its pressure when the vault is sealed by water rising above the lower edge of the hood, and thus the water within the hood tends to rise higher. A change in conditions Nos. 4 and 5 may affect the air seal vault favorably and make the air seal vault resist a higher level of water than stated in the first paragraph of this section or may affect the air seal vault unfavorably and make the water rise higher within the hood of the vault sealed with water on its four sides. When changes in conditions 2, 3, 4, and 5 are sufficient to cause water to enter said vault and to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

The terms "waterproof" and "airtight" and "vermin proof" as used by respondent as described herein, mean in fact, and are understood by many ultimate purchasers of said vaults to mean, a watertight, airtight, verminproof vault, a vault which will not permit water nor air or vermin to enter the same and that it will endure as such under burial conditions for a period of twenty-five to fifty years or more. Water, vermin, and air do enter these said air seal vaults through the bottom holes in the pan, and the open joint thereof or through pit holes due to corrosion, or when there is so much water in the graves in which they are contained that the water touches the casket, or because of the absence of one or more of the conditions described in paragraph 8 above. In dry graves these vaults are not vermin proof or airtight.

Disinterment after burial is rare and respondent has rarely been called upon to replace any of its said vaults.

PAR. 9. Respondent also manufactures two types of mechanically sealed end closing vaults, the quick closing type and the bolted end type. They are made of the same metals as the air-seal vaults. The ends are stamped out of sheet metal by powerful presses, using special dies to bend to form at the same operation. The bottoms are stamped in like manner. Side walls and dome are formed by bending the metal sheets in great presses. The vault is electrically welded on the inside. The ends, except the door, are electrically welded to the side walls and dome on the inside. The door at the open end of the mechanically closed types is hinged on one side wall or the top.

In the quick closing type, this door is equipped with powerful mechanical clamps and closes tightly against a gasket. When the operating mechanism on the outside of the door is turned the clamping places on its inner side engage behind a flange inside the wall and seal the vault.

In the bolted end type, the door is removable in its entirety and has no hinges. When the door is placed in position against the gasket, it is then bolted securely all the way around the edge of the door; this door can be opened and removed only by releasing these bolts.

Each of the two mechanically sealed types of National vaults manufactured by respondent is tested before it is shipped by locking the open end as above described then drilling a small hole in the door, and attaching an air compression line at this hole; then completely submerging the vault under water in the same manner as the respondent tests its air seal vaults; then compressed air is forced into the submerged vault through the air line so connected with the vault. The remainder of the test, inspection and rewelding is identical as in the case of the air seal vault, except that after the test has been completed and the vault is found to be airtight, the hole for the introduction of the compressed air is closed by welding.

The above use of the two types of end-closing vaults of the respondent is intended by the respondent for the purpose of protecting the corpse against accelerated decay and disintegration through damage by water, the admission of vermin, air and other elements from the ground; but said use of the air seal vault of the respondent is intended by the respondent for the purpose of protecting the corpse against such accelerated decay and disintegration through damage by water rising to such a height within the dome of the vault that it will touch the bottom of the casket. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

Each of the mechanically sealed types of vaults manufactured by respondent is airtight, watertight and waterproof before and at the time it is shipped. After it has been properly closed and sealed, it will not permit any water to enter it from the ground at the time it is buried underground. It will remain waterproof so long as the life of the metal, and the life of the seal. The vault will cease to be waterproof when a hole has been punctured through the thickness of the metal by rust or corrosion or other causes or the seal has ceased to function during the course of the years after its burial.

PAR. 10. The two metals of which all of respondent's vaults are made are ferrous metals and will rust after burial underground. Rust is an oxidation of iron, the union of iron and oxygen and its presence means that to some extent the metal has corroded. No ferrous metal has an absolute rate of corrosion, but it depends on local conditions so that the rate of corrosion cannot be determined with a great deal of precision.

The corrosive qualities of different soils vary immensely. In some soils the corrosion is practically negligible.

There are many sections throughout the United States where soil corrosion is not a problem. In some soils in the United States a 12 U. S. Standard gauge metal vault buried underground would resist penetration by corrosion for a period of more than 100 years in such soils.

As one goes down in the ground, the strata in contact with the burial vault changes, and it may be a more corrosive or less corrosive strata, depending on the location.

The life of a metal burial vault until punctured by rust or corrosion, in terms of years after burial, depends upon the character of the soil in which it is buried and upon the climatic and other conditions prevailing in the territory where interment is made.

All soils are more or less corrosive and in the course of years in the future, will cause all ferrous metals to pit or corrode.

Corrosion in the course of years in the future will cause the failure of respondent's ferrous metal vaults.

Respondent's vaults and the metal of which they are manufactured have not been tested underground for the full period of fifty years nor have they been manufactured or so advertised as long as fifty years.

Respondent's ferrous metal vaults will not remain waterproof for a period of fifty years when buried in some of the more corrosive soils in the United States.

There are some soils in the United States where respondent's ferrous metal vaults will pit through and cease to be waterproof in a period of from eight to ten years.

Metal grave vaults of 12 gauge ferrous metal have been disinterred, in good condition with no water in them, no holes in them, and no damage to the caskets and the corpses in them from water entering or ever having entered these vaults from the grave in 26 States and the District of Columbia, after being buried 48 years, 37 years, 33 years, 30 years, 27 years, 26 years, 25 years, 24 years, 23 years, 22 years, 21 years, 20 years, 19 years, 18 years, 17 years, 16 years, 15 years, 14 years, 13 years, 12 years, 11 years, 10 years, 9 years, 8 years, 7 years, 6 years, 5 years, 4 years, 3 years, 2 years, and 1 year or less.

Other metal vaults of 12 gauge ferrous metal have been disinterred and found to be in bad condition with water in them, with holes in them, and the caskets and corpses therein in a damaged condition due to water having entered these vaults from the grave in which they were contained.

PAR. 11. In the course and conduct of said business, respondent is in substantial competition with other individuals, copartnerships, and corporations engaged in the sale and distribution of metal, stone, concrete, cement, and other burial vaults, in and between the various States of the United States.

PAR. 12. Respondent's vaults are equal to the standard metal vaults manufactured by the industry. They are not inferior products, are not made of an inferior grade of metal or method of construction different from those used by reputable and responsible members of the metal vault industry.

PAR. 13. Respondent is and has been financially able, ready and willing to comply fully with, and perform the full terms of its written certificate of warranty, by replacing without cost any one of its vaults which has been damaged by water admitted from the grave because of the failure of the vault due to rust, corrosion, defective material or workmanship; respondent has made and issued said certificates of warranty in good faith.

PAR. 14. All of the said ferrous metal burial vaults so manufactured by the respondent are useful, proper and suitable receptacles for the burial of the dead and are transported in interstate commerce for such purpose. In certificates of warranty and in other advertising material used by the respondent, its agents, employees and representatives, in offering for sale or selling the various types of air seal or end closing ferrous metal burial vaults manufactured by it, the respondent has represented:

1. That they are made of rust-resisting metal;
2. That the air seal vaults are airtight or vermin proof either at the time of interment or after burial underground;
3. That the air seal vaults are waterproof;

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4. That any of said vaults will endure as waterproof under all burial conditions for a period of 50 years, or for any fixed or stated period of time;

5. That any of its said vaults give permanent protection after burial underground;

6. That the remains, if encased in any of its vaults are fully protected against water, earth and nature's ruthless elements;

7. That said vaults have been proven by time to be permanently sealed;

8. That any of said vaults are rustproof or will not corrode;

9. That no earth load can crush through the top of any of said vaults.

In connection with the sale of its vaults, the respondent has also made use of certificates of warranty which guarantee such vaults to be airtight, verminproof, and waterproof when used for burial purposes.

All of the aforementioned representations, together with the acts and practices of the respondent hereinabove set out are deceptive and misleading and have and have had the capacity and tendency to induce the public to purchase and use respondent's vaults in the belief that said statements and representations are true, and each and all of them are to the prejudice of the public and have the capacity and tendency to unfairly divert trade to the respondent from its said competitors.

CONCLUSION

The acts and practices of the respondent under the conditions described in the foregoing findings are to the prejudice of the public and of respondent's competitors; they are 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 the complaint of the Commission, the answer of respondent, the stipulated facts filed herein, 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, National Grave Vault Company, a corporation, its officers, representatives, agents, and employees, in con-

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nection with the offering for sale, sale and distribution of ferrous metal burial vaults in interstate commerce or in the District of Columbia, forthwith cease and desist from:

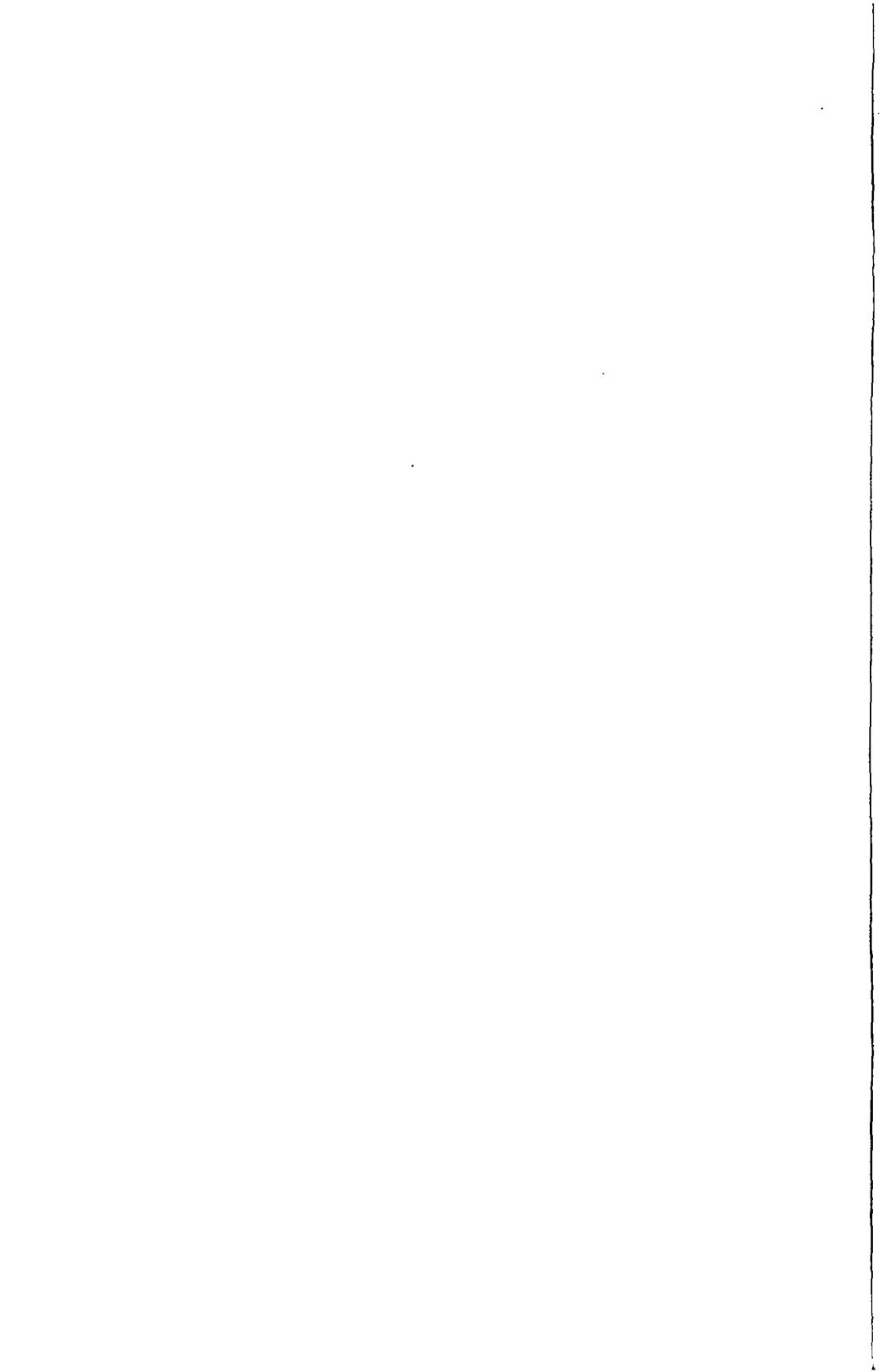
I. Representing in purported certificates of warranty, or guarantees, in advertising, or in any other manner, that:

- (a) Any of such vaults are made of rust resisting metal,
- (b) Such Air Seal vaults are airtight or verminproof, either at the time of interment or after burial underground,
- (c) Such Air Seal vaults are waterproof,
- (d) Any of such vaults will endure as waterproof or verminproof under all burial conditions for a period of fifty years, or for any fixed or stated period of time,
- (e) Any of such vaults give permanent protection after burial underground,
- (f) The remains, if encased in any of such vaults, are fully protected against water, earth, and nature's ruthless, or other elements,
- (g) Any of such vaults have been proved by it to be permanently sealed at the time of burial thereof,
- (h) Any of such vaults are rustproof, or will not corrode,
- (i) No earth load can crush through the tops of such vaults,

II. And from so making other statements or representations of like import;

III. And from using certificates of "Warranty" or "Guaranty" in connection with the sale, or offering for sale, of such vaults, unless it clearly appears therein that such certificates refer to the care, skill, mechanism, and materials used in the construction of said vaults, and to tests made to determine whether they leak, and not to their durability as to remaining airtight, verminproof, or waterproof when used for burial purposes.

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.



ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

BUFF & POLISHING WHEEL MANUFACTURERS' ASS'N ET AL. Complaint, December 5, 1935. Order, July 22, 1936. (Docket 2642.)

Charge: Combining or conspiring to fix uniform prices, in connection with open price filing, carried on by members under National Recovery Administration and voluntarily since; in connection with manufacture and sale of cotton buff and polishing wheels.

Record closed, after answers, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same, and being now fully advised in the premises, and it appearing to the Commission that the practices charged in the complaint were carried on under the authority conferred by a code formulated and approved under the National Industrial Recovery Act, and there being no evidence that the practices charged in the complaint have been indulged in by the respondents since the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corp. et al. v. United States* (295 U. S. 495), and it being the policy of the Commission not to proceed against respondents for practices authorized and engaged in prior to May 27, 1935 (the date of the above decision), pursuant to codes formulated and approved under the National Industrial Recovery Act.

It is ordered, That the case growing out of the complaint hereinbefore issued on December 5, 1935, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Wm. T. Chantland for the Commission.

Mr. John T. McGovern, of New York City, for respondents, generally and along with *Mr. Joseph A. McCaffrey*, of Jamaica, N. Y., for John Fuchs.

CLEAR SPRING DISTILLING CO. Complaint, June 6, 1935. Order, June 23, 1936. (Docket 2427.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly; in connection with the wholesaling of liquors, purchasing and reselling of whiskies, gins, and other spirituous beverages.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon respondent's motion, affidavit and memorandum in support thereof, filed herein on June 25, 1936; and it appearing to the Commission that respondent changed its name by amendment of its corporate charter to "Clear Spring Company", that it has abandoned the practices and violations of law alleged in the Commission's complaint issued herein on June 6, 1935, and stated under oath its intention not to resume the said practices; and it therefore appearing to the Commission that it is unlikely that the respondent will resume the said practices, and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on June 6, 1935, be and the same is hereby closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John W. Addison*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Hall Johnston, of Washington, D. C., for respondent.

MANDRE, INC.; AND LOUIS C. ROSENBLATT ET AL. doing business as M. BROOKS & Co.; ET AL. Complaint, May 29, 1936. Order July 30, 1936. (Docket 2828.)

Charge: Misrepresenting nature and value of product; in connection with manufacturing and dealing in furs, fur coats, fur pieces, etc.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that respondents Mandre, Inc., a corporation, Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman, and Mandre, Inc., and Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman, individually and trading under the name M. Brooks & Company, have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was on the 27th day of July 1936 [No. 01460], approved by the Commission, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on May 29, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Carrel F. Rhodes for the Commission.

Mr. Milton Handler, of New York City, for respondents.

RUBIN E. RAPPEPORT, doing business as R. E. RAPPEPORT. Complaint, August 8, 1936. Order, August, 24, 1936. (Docket 2891.)

Charge: Misrepresenting nature or composition of product; in connection with the manufacture and sale of leather luggage.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing to the Commission that the respondent after service upon him of a complaint, executed a stipulation to cease and desist from the violations of law alleged in said complaint, and the Commission having duly considered the matter and being fully advised in the premises;

It is ordered, That the case growing out of the complaint issued herein on August 8, 1936, be, and the same hereby is, closed, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. William L. Pencke for the Commission.

DISTILLERS PRODUCTS CORP. Complaint, July 8, 1935. Order, September 15, 1936. (Docket 2494.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly in said respect; in connection with the rectifying, blending and bottling of whiskies, gins, and other alcoholic beverages and in the sale thereof.

Record closed by the following order:

This matter having come on for consideration by the Commission upon the record, evidence and testimony received before John L. Hornor, an examiner of the Commission duly designated for that purpose, and it appearing to the Commission that respondent's corporate existence was terminated by dissolution on the 31st of December 1935; that respondent ceased to do any business as of June 30, 1935; that all of respondent's physical assets were disposed of by sale in the proceedings incident to its dissolution, and that it is unlikely ever to resume either its corporate existence or the unfair practices set forth in the said complaint; and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on July 8, 1935, be and the same is hereby closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Joseph C. Bender, trustee, of Jersey City, N. J., for respondent.

ROYAL DISTILLERS, LTD. Complaint, September 24, 1935.¹ Order, September 24, 1936. (Docket 2394.)

Charge: Using misleading trade or corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly in said respect; in connection with the manufacturing, bottling, and sale of gins.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon supplemental investigation, and it appearing that the respondent, Royal Distillers, Ltd., has surrendered all its permits as of June 30, 1935, has not further engaged in business since that date, is insolvent, has transferred all its physical assets to Wexmar Liquor Company of Chicago, Ill., and that it, therefore, appears unlikely that respondent, Royal Distillers, Ltd., will resume the sale of spirituous beverages in interstate commerce, and the Commission being fully advised in the premises:

Now, therefore, it is hereby ordered, That the case growing out of the amended and supplemental complaint herein issued on the 24th day of September, A. D. 1933, be, and the same hereby is, closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. PGad B. Morehouse for the Commission.

W. GORDON PERVIS. Complaint, August 30, 1935. Order, October 14, 1936. (Docket 2540.)

Charge: Advertising falsely or misleadingly as to properties of product; in connection with the sale of so-called electric radio plates for the treatment of various diseases.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed for the reason that the evidence adduced does not sustain the allegations of the complaint.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hilldrop for the Commission.

Mr. W. M. Goodwin, of Sanderson, Ga., and *Mr. Hamilton McWhorter*, of Lexington, Ga., for respondent.

¹ Amended and supplemental.

NATIONAL STANDARD PARTS ASSOCIATION, ET AL.² Complaint, April 15, 1936. Order, October 14, 1936. (Docket 2764.)

Charge: Combining or conspiring on the part of the association and its 295 jobber and 194 manufacturer members to control and fix prices and control channels of distribution, in connection with the manufacture and sale of automobile parts and accessories.

Record closed, after answers, by the following order:

This matter coming on for consideration by the Commission upon the record, and upon the recommendation of the Chief Counsel that the complaints heretofore issued separately in the matter of National Standard Parts Association, et al, Docket No. 2764, and in the matter of Motor & Equipment Wholesale Association, et al, Docket No. 2765, be consolidated into a single complaint, and that the case growing out of the complaint hereinbefore issued on April 15, 1936 be closed, and the Commission having duly considered the said recommendation and the record and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on April 15, 1936 in the matter of National Standard Parts Association, et al, be, and the same hereby is, closed.

Mr. Walter B. Wooden and Mr. Daniel J. Murphy for the Commission.

Wilcox & VanAllen, of Buffalo, N. Y., for National Standard Parts Association and various officers and members thereof.

Oxtoby, Robison & Hull, of Detroit, Mich., for D. W. Rodger, Federal-Mogul Corp., H. Gray Muzzy and Frank Kellison.

Tolles, Hogsett & Ginn, of Cleveland, Ohio, for B. Patterson, W. H. Richardson, Thompson Products, Inc., F. C. Crawford, Ray Swarner, Timken Roller Bearing Co. and L. H. Halderman.

Kenworthy, Shallberg & Harper, of Moline, Ill., for R. M. Allison and A. C. Darling.

Mr. John Thomas Smith, of New York City, for AC Spark Plug Co. and F. S. Kimmerling.

Beardsley & Beardsley, of Kansas City, Mo., and *Mr. George S. Ward*, of Washington, D. C., for Automotive Trades Association of Greater Kansas City, Charles Berg, Howard Krimminger and C. R. Barnett.

Mr. Russell Jackson, of Milwaukee, Wis., for Blackhawk Manufacturing Co. and H. P. Brumder.

Cutting, Moore & Sidley, of Chicago, Ill., for Burgess Battery Co.

² Respondents not named include numerous individuals joined as past and present officers and directors of said association and numerous companies, individuals and organizations joined as past or present members thereof or by reason of their relationship to the matters involved, as set forth in complaint in question.

Mr. Ode L. Rankin and *Mr. Frank P. Mies*, of Chicago, Ill., for Clawson & Bals, Inc., John Z. Clawson, R. K. Miller and F. J. Dvorak.

Mr. Wilbur F. Denious and *Mr. Dayton Denious*, of Denver, Colo., for Gates Rubber Co. and G. W. Liljestrom.

Eckert & Peterson, of Chicago, Ill., for John C. Hoof Co., John C. Hoof and A. C. Hoof.

Mr. John W. Scott and *Mr. Hayward Scott*, of Joplin, Mo., for Joplin Supply Co., F. C. Ralston and G. E. Spencer.

Welles, Kelsey & Coburn, of Toledo, Ohio, for Logan Gear Co., J. B. Nordholt and Frank B. Chester.

Bulkley, Ledyard, Dickinson & Wright, of Detroit, Mich., for McAleer Manufacturing Co. and Ernest Hummitch.

Green, Henry & Remmers, of St. Louis, Mo., for McQuay-Norris Manufacturing Co.

Mr. Charles M. Grayston, of Joplin, Mo., for Myers Motor Supply Co., Myers Tri-State Supply Co., W. D. Myers and J. L. Lankford.

Mr. Ben. G. Smith, of New York City, for National Carbon Co., Inc., F. R. Sandy and W. E. Reed.

Dykema, Jones & Wheat, of Detroit, Mich., for Republic Gear Co. and John Dages.

Miller, Mack & Fairchild, of Milwaukee, Wis., for The Shaler Co., P. H. Dorr and W. S. Coles.

Griswold, Green, Palmer & Kapp, of Cleveland, Ohio, for Simmons Manufacturing Co. and Charles F. Groth.

Mr. James B. Malone, of Springfield, Ohio, for Springfield Manufacturing Co. and William Metz.

Cobbs & Logan, of St. Louis, Mo., for Sunnen Products Co, Joseph Sunnen and W. A. Douglass.

Seligsberg & Lewis, of New York City, for Tung-Sol Lamp Works, Inc. and Z. S. Myers.

Mr. Arthur N. Taylor, of Detroit, Mich., for United Motors Service, Inc. and F. A. Oberheu.

Harding, Murphy & Tucker, of Kansas City, Mo., for L. A. Johnson.

Mr. Thomas D. Huff, of Chicago, Ill., for Victor Manufacturing & Gasket Co., John H. Victor and C. C. Secrist.

Alden, Latham & Young, of Chicago, Ill., for Walker Manufacturing Co. and Malcolm McCormick.

MOTOR & EQUIPMENT WHOLESALE ASSOCIATION, ET AL.² Complaint, April 15, 1936. Order, October 14, 1936. (Docket 2765.)

² Respondents not named include numerous individuals joined as officers and directors of said association and numerous companies, individuals and organizations joined as members thereof or by reason of their relationship to the matters involved, as set forth in complaint in question.

Charge: Combining or conspiring on the part of respondent and its dominant trade membership of 400 jobbers to control market therein and fix and maintain prices therefor and control channels of distribution; in connection with the manufacture and sale of automobile parts and accessories.

Record closed, after answers, by the following order:

This matter coming on for consideration by the Commission upon the record and upon the recommendation of the Chief Counsel that the complaints heretofore issued separately in the matter of National Standard Parts Association, et al, Docket No. 2764, and in the matter of Motor & Equipment Wholesale Association, et al, Docket No. 2765, be consolidated into a single complaint, and that the case growing out of the complaint hereinbefore issued on April 15, 1936 be closed, and that the Commission having duly considered the said recommendation and the record and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on April 15, 1936, in the matter of Motor & Equipment Wholesale Association, et al, be, and the same hereby is, closed.

Mr. Walter B. Wooden and *Mr. Daniel J. Murphy* for the Commission.

Cassels, Potter & Bentley, of Chicago, Ill., for Motor & Equipment Wholesale Association and various officers and members thereof.

Wilcox & VanAllen, of Buffalo, N. Y., for various member companies, and officers thereof.

Beardsley & Beardsley, of Kansas City, Mo. and *Mr. George S. Ward*, of Washington, D. C., for Automotive Trades Association of Greater Kansas City, Charles Berg, Howard Krimminger and C. R. Barnett.

Gibson & Stewart, of Des Moines, Iowa, for Herring-Wissler Co. and W. E. Wissler.

Ogren & Cross, of Chicago, Ill., for Mississippi Valley Automotive Jobbers Association, G. J. Timmermann, E. J. McKee and L. S. Graham.

Snyder & Sears, of Sioux City, Iowa, for William Warnock Co., Inc., L. L. Warnock and E. K. Edgar.

Mr. Russell Jackson, of Milwaukee, Wis., for Blackhawk Manufacturing Co. and H. P. Brumder.

Cutting, Moore & Sidley, of Chicago, Ill., for Burgess Battery Co.

Oxtoby, Robison & Hull, of Detroit, Mich., for Federal-Mogul Corp., H. Gray Muzzy and Frank Kellison.

Mr. Wilbur F. Denious and *Mr. Dayton Denious*, of Denver, Colo., for Gates Rubber Co. and G. W. Liljestrom.

Bulkley, Ledyard, Dickinson & Wright, of Detroit, Mich., for McAleer Manufacturing Co. and Ernest Hummitch.

Green, Henry & Remmers, of St. Louis, Mo., for McQuay-Norris Manufacturing Co.

Mr. Ben. G. Smith, of New York City, for National Carbon Co., Inc., F. R. Sandy and W. E. Reed.

Miller, Mack & Fairchild, of Milwaukee, Wisc., for The Shaler Co., P. H. Door and W. S. Coles.

Tolles, Hogsett & Ginn, of Cleveland, Ohio, for Thompson Products, Inc., F. C. Crawford, Ray Swarner, Timken Roller Bearing Co. and L. H. Halderman.

Seligsberg & Lewis, of New York City, for Tung-Sol Lamp Works, Inc. and Z. S. Myers.

Mr. Arthur N. Taylor, of Detroit, Mich., for United Motors Service, Inc. and F. A. Oberheu.

Harding, Murphy & Tucker, of Kansas City, Mo., for L. A. Johnson.

Mr. Thomas D. Huff, of Chicago, Ill., for Victor Manufacturing & Gasket Co., John H. Victor and C. C. Secrist.

Alden, Lathan & Young, of Chicago, Ill., for Walker Manufacturing Co. and Malcolm McCormick.

HARRY MARKOVICH, ET AL. doing business as CALIFORNIA CANDY CO. Complaint, July 20, 1934. Order, October 19, 1936. (Docket 2211.)

Charge: Using lottery scheme in merchandising; in connection with the packing, assembling and sale of candy assortments.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record and the Commission having duly considered the same and being now fully advised in the premises,

It is ordered, That the complaint be, and the same hereby is, dismissed for the reason that the testimony and other evidence introduced do not sustain the allegations of the complaint herein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Mr. Jacob Goodstein, of New York City, for respondents.

CALIFORNIA ALFALFA PRODUCTS Co. Complaint, October 15, 1932. Original order, June 12, 1934. Docket 2067, 19 F. T. C. 53. Order vacating, etc., October 21, 1936.

Charge: Advertising falsely or misleadingly as to use, indorsement or approval and qualities or properties of product and scientific facts in relation thereto; in connection with the manufacture and sale of food products under the trade name of "Alvita".

Cease and desist order in this case was vacated by the following order:

This matter coming on for consideration on the record herein, and the Commission being fully advised in the premises,

It is ordered, That the order to cease and desist, heretofore issued in the above matter on the 12th day of June, A. D., 1934, be, and the same is hereby vacated; and that the taking of testimony on the amended and supplemental complaint, issued herewith be, and the same hereby is ordered to be commenced in accordance with the provisions of the notice subjoined to the said amended and supplemental complaint.

THE HEALTH-O-QUALITY PRODUCTS Co. Complaint, October 23, 1935. Order, November 7, 1936. (Docket 2593.)

Charge: Advertising falsely or misleadingly as to prize contests and business status; in connection with the sale of toilet preparations, cosmetics, medicinal preparations, flavoring extracts, food products, etc.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, The Health-O-Quality Products Company, a corporation, has been dissolved and that due notice of such dissolution has been given, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on October 23, 1935, be, and the same hereby is, closed.

Mr. Harry D. Michael for the Commission.

Harmon, Colston, Goldsmith & Hoadly, of Cincinnati, Ohio, and *Lyons, Cohen, Watters & Baldrige*, of Washington D. C., for respondent.

MASSACHUSETTS BREWERIES & DISTILLERIES CORP. Complaint, June 28, 1935. Order, November 25, 1936. (Docket 2472.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly in said respect; in connection with the sale of whiskies, gins and other spirituous beverages.

Record closed by the following order:

This matter coming on for consideration by the Commission upon supplemental investigation, and it appearing that the respondent, Massachusetts Breweries & Distilleries Corp. on March 20, 1935, by articles of amendment to its corporate charter duly filed in the office of the Secretary of the Commonwealth of Massachusetts, has changed

its corporate name to "Massachusetts Wine and Spirit Corp.;" and that it appears to be unlikely that the said respondent will resume interstate commerce in spirituous beverages under its former trade or corporate name of "Massachusetts Breweries & Distilleries Corp." and the Commission being fully advised in the premises:

It is, therefore, now ordered, That the case growing out of the complaint herein issued on the 28th day of June 1935, against said respondent be, and the same is, hereby closed, without prejudice to the right of the Commission, should the facts warrant, to re-open the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. PGad B. Morehouse for the Commission.

FRIEDMAN SILVER Co., INC. Complaint, March 14, 1936. Order, November 27, 1936. (Docket 2746.)

Charge: Misbranding or mislabeling as to composition, manufacture and quality of product; in connection with the manufacture and sale of silver-plated hollow-ware.

Case dismissed and record ordered closed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken in support of the allegations of the complaint and in opposition thereto, and the Commission having duly considered the record, and being now fully advised in the premises;

It is ordered, That the allegations of the complaint with respect to the use by the respondent of the letters E. P. N. S. be, and the same are hereby, dismissed, on the ground of failure of proof; and,

It is further ordered, That the case growing out of the use of the letters W. M. M. be, and the same is hereby, closed without prejudice to the right of the Commission to reinstate and resume prosecution of the same should the facts so warrant.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Bernard F. Nathan, of New York City, for respondent.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

1756. **False and Misleading Brands or Labels—Linens.**—Robert McBratney & Co., Inc., a corporation, engaged as an importer of linens and in the sale of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Robert McBratney & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Non-Krush" as a brand or label on its said products; and from the use of the words "Non-Krush" in any way which may import or imply that the products so referred to are uncrushable, when such is not the fact. (July 13, 1936.)

1757. **False and Misleading Brands or Labels and Advertising—Sewing Kits.**—Sanders Manufacturing Co., a corporation, engaged in the sale of novelties and advertising specialties, part of which it manufactures and part of which it purchases from other manufacturers in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Sanders Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from representing in advertisements or advertising matter distributed in interstate commerce that its sewing kits are "Made in America" or "Made in U. S. A." or "American Made", or by any equivalent expression, when in fact such products are not wholly manufactured

¹ For false and misleading advertising stipulations effected through the Commission's special board, see p. 1167 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, July 10, 1936, to November 30, 1936, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1755, inclusive—may be found in vols. 10 to 22 of the Commission's decisions.

² In the interest of brevity there is omitted from the published digest of the stipulation the agreement under which the stipulating respondent or respondents, as the case may be, agree that should such stipulating respondent or respondents "ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence" against such respondent or respondents, as the case may be, "in the trial of the complaint which the Commission may issue."

or produced in the United States; selling and distributing sewing kits in interstate commerce in cases marked "Made in America" or "Made in U. S. A." as a single article, unless the name of the country of origin of the imported part thereof is distinctly and plainly marked on the outside and readily accessible to the view of a purchaser or prospective purchaser. (July 13, 1936.)

1758. Misrepresenting Product and False and Misleading Advertising—Cosmetics.—Vimay-Chany, Inc., a corporation, engaged in the sale and distribution of perfumes and also of a line of cosmetics manufactured by Vimay, Inc., under the trade name or brand of "Amphoteric" products, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Vimay-Chany, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing, directly or indirectly, through agents or solicitors or by means of printed advertisements and advertising matter: that the human skin becomes "off balance"; that its said products will correct an over-acid condition or an over-alkaline condition of the skin; that its said products will "normalize" the skin; that the use of soaps or of other facial creams will cause or aggravate an over acid or over alkaline condition of the skin; or that their products will change the fundamental nature of the excretions of the skin. (July 13, 1936.)

1759. False and Misleading Brands or Labels and Advertising—Cheese.—George W. Stuart, an individual, trading as Geo. W. Stuart Co. engaged in the business of manufacturing cheese and in the sale and distribution thereof in interstate commerce, in competition with other firms, individuals, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

George W. Stuart, in soliciting the sale of and selling his cheese product in interstate commerce, agreed to cease and desist from the use of the words "Little Switzerland", in his advertising having interstate circulation or distribution, or as a brand or label for those of his said products which are made or manufactured in the United States of America; and from the use of the word "Switzerland" either independently or in connection or conjunction with the word "Little", or with any other word or words, or in any way as a brand or label for or in advertising his cheese products, so as to import or imply that said products are made or manufactured in Switzerland and imported into the United States of America, when such is not the fact. (July 13, 1936.)

1760. **False and Misleading Trade Name, Brands or Labels, and Advertising—Raincoats.**—William Kahn, an individual, engaged in the sale of raincoats, at retail, through agents or solicitors, and in the distribution of said products in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The B. F. Goodrich Co., a corporation, engaged in the manufacture of tires and other products made of rubber and in the sale and distribution of said products in interstate commerce, on account of its extensive advertising and of the large sale and distribution of its products, the name "Goodrich" has become associated in the public mind with a demand for rubber products manufactured by said company.

William Kahn, in soliciting the sale of and selling his raincoats in interstate commerce, agreed to cease and desist from the use of the word "Goodrich" as a part of or in connection with the trade name under which he carries on his business; and from the use of the word "Goodrich" in any way which may import or imply that the products which he sells and distributes are the products of The B. F. Goodrich Co.; the use of the word "Manufacturers" and/or "Factories", either independently or in connection with the name of any place or city in his advertisements or advertising matter; and from the use of the words "Custom Made" on labels attached to garments which are not custom made or made to measure; stating or representing, directly or through his agents or solicitors, that he is doing special advertising work, or selling raincoats made to individual measurements in order to advertise any brand of cloth, or at the actual cost of labor in making the same, when such is not the fact. (July 13, 1936.)

1761. **False and Misleading Brands or Labels—Scarves.**—Milton Wolfe, an individual, engaged, under the trade name and style of "Harrold's", in the purchase of scarves from the manufacturers thereof, and in the sale of said products in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Milton Wolfe, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from branding, labeling, marking, or representing his products as "Hand-Loom Woven", when in fact said products are not woven or manufactured on a hand loom. (July 13, 1936.)

1762. **False and Misleading Brands or Labels—Grinding Wheels, etc.**—Goodrich Grinding Wheel Co., a corporation, engaged in the business of manufacturing grinding wheels, oilstones, abrasive special-

ties, and razor hones, and in the sale and distribution of said products in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Goodrich Grinding Wheel Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the labels or cartons in which said products are placed or packed, or in any other way, of a fictitious value or price in excess of the price at which said products are sold or are contemplated to be sold in the usual course of trade. The said company also agreed to cease and desist from the use, on its cartons or otherwise, of the phrase "\$1.00 Value Now only 25¢", or of any other phrase or phrases of similar meaning, so as to import or imply that the price of the product referred to has been recently reduced, when such is not the fact. The said company further agreed to cease and desist from the use on its cartons or otherwise of the phrases "Pat. Appl'd For" and "Pat. Pending", or of either of said phrases, to represent, designate, or refer to its products on which it has no application pending for patent, and from the use of the said phrases, or either of them, so as to import or imply that it has an application pending for patent, when such is not the fact. (July 13, 1936.)

1763. False and Misleading Brands or Labels and Advertising—Pharmaceutical Preparations.—The De Pree Co., a corporation, engaged in the manufacture of pharmaceutical preparations and in the sale and distribution of said products, at wholesale, in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The De Pree Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "No After Effects" in advertisements and advertising matter distributed in interstate commerce, and particularly on the containers in which its said products are packed, sold, and distributed. (July 13, 1936.)

1764. False and Misleading Advertising—Rubber Products.—International Latex Corporation, engaged in the manufacture of numerous articles, such as bathing caps, pad shields, crib sheets, tobacco pouches, shampoo capes, and baby pants, which products the said corporation sells in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

International Latex Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the

use in its advertisements and advertising matter or in any other way of the words "Not Rubber" and/or "Looks like rubber, but isn't", or of any other words or statements of equivalent meaning that directly assert or clearly import and imply that said products are made of a material other than rubber or are made of a material other than one consisting essentially or basically of rubber hydrocarbon obtained from the caoutchouc tree. The said corporation also agreed to cease and desist from the use of the words "Not Rubber" or "It looks like rubber but isn't" or of any other words, phrases, or statements of equivalent meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are not composed of rubber, when such is not the fact. Said corporation also agreed to cease and desist from the use of statements or representations to the effect that said products prevent perspiration, make sweating impossible, or will not provoke perspiration, or of any other synonymous statements or representations, when such is not the fact. Said corporation also agreed to cease and desist from the use in its advertisements or advertising matter or in any other way of the word "sterilized", or of any other synonymous term or terms 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 sterile, that is to say, free of bacteria, when such is not the fact. (July 14, 1936.)

1765. **False and Misleading Advertising—Hosiery.**—New Process Co., a corporation, engaged in the sale and distribution by mail order direct to purchasers, in interstate commerce of a general line of dry-goods, including hosiery, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

New Process Co., in soliciting the sale of and selling its hose in interstate commerce, agreed to cease and desist from the use in its advertising or in any other way of the statement and representation "Originally \$1.59 a pair—now eight pairs for only \$5.55", so as to import or imply that the hose so offered for sale and sold has a present day market value of \$1.59, or that the price of said hose has been recently reduced from \$1.59 a pair to eight pairs for \$5.55 or 69½¢ per pair. Said corporation also agreed to cease and desist from stating or representing in its advertising or in any way that \$1.59 hose is being offered for sale at approximately 69½¢ per pair and/or that said offer is a limited one or is based on a limited quantity when such are not the facts. (July 17, 1936.)

1766. **False and Misleading Trade Name, Brands or Labels, and Advertising—Cosmetics.**—Fred E. Delaney and Cora Lee Delaney, copartners, engaged in the sale of a line of cosmetics and toilet prepara-

tions, under the trade name of "Mata-Hari", and in the distribution of said products in interstate commerce, in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Fred E. Delaney and Cora Lee Delaney, in soliciting the sale of and selling said products in interstate commerce, agreed to cease and desist from the use of the word "Medicated" to describe, designate, or refer to products not impregnated with any drug or other medicinal ingredient; the use of the words "Skin Tissue Food" or "Anti-Wrinkle Cream" or "Skin Tonic and Freshner", to describe or designate products which do not feed the tissues, prevent wrinkles, or act as a tonic to the human skin; stating or representing, directly or indirectly, that their "Acne-Crystals" constitute an adequate remedy for acne, or that their "Blackhead Cream" is effective in the removal of blackheads; advertising or representing their demonstrators as "beauticians" or "skin specialists" unless the persons so designated and described have an appropriate degree or have had scientific training entitling them to such designations; advertising or representing that they make, or teach others to make, scientific diagnoses of skin conditions; and from the use of the words "Diagnostic Skin Treatment Institute" unless and until they conduct an institute wherein pupils are taught how to make scientific diagnoses of skin condition; and the use on labels and other advertisements or advertising matter of the words "New York" and/or "Washington, D. C." unless and until they own, occupy, and conduct a branch office or offices in said cities. (July 20, 1936.)

1767. **Failure to Disclose—Baseball Caps.**—Benjamin Cohen and Solomon Cohen, copartners trading under the firm name and style of S. Cohen & Sons, engaged in the business of manufacturing baseball caps among other novelty products and in the sale and distribution thereof in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Benjamin Cohen and Solomon Cohen, in connection with the sale and offering for sale of baseball caps in interstate commerce, agreed to cease and desist from selling or offering for sale such products manufactured or made from materials obtained from second hand, old, worn, used, or discarded felt hats, unless and until there is stamped upon, affixed, or attached to said baseball caps in a conspicuous place so as to be easily and readily seen, some word or words clearly indicating that said baseball caps are not made or manufactured from new and unused felt or other materials, but are made or manufactured from felt or other materials obtained from second hand, old, worn, used, or discarded hats. (July 20, 1936.)

1768. **False and Misleading Advertising—Cosmetics and Toilet Preparations.**—Tril-O-Gy Beauty Service, Inc., a corporation, engaged in the sale of cosmetics and toilet preparations and in the distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Tril-O-Gy Beauty Service, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing, directly or indirectly in its advertisements and advertising matter distributed in interstate commerce: that its products are prepared in accordance with the prescription of a dermatologist, "Beautician", or other scientifically qualified person, and/or that it is equipped to, and does, prescribe individual corrective service based upon a scientific analysis by an expert "Beautician"; that its products possess such properties as to nourish or rejuvenate the skin, to smooth away lines, restore elasticity, eliminate impurities, clear up muddy or sallow complexions, or to stimulate the circulation; that its products will penetrate the skin or the pores and nourish or rejuvenate the skin, make the same firm or free from blemishes such as lines, wrinkles, sagging muscles, blackheads, or pimples by external application; and that it has a factory or laboratory wherein the products which it sells and distributes are made or compounded when such is not the fact. (July 23, 1936.)

1769. **False and Misleading Advertising—Ribbons.**—Isidor Abramovitz and Benjamin Kaplan, copartners, trading under the firm name and style of A. & S. Ribbon Co., engaged in the sale and distribution of ribbons in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Isidor Abramovitz and Benjamin Kaplan, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "Manufacturers", either alone or in connection or conjunction with any other word or words, on their printed matter distributed in interstate commerce, when in fact said copartners do not make or manufacture their said products; and from the use of the word "Manufacturers" in any way so as to import or imply that they actually own and operate or directly and absolutely control the plant or factory in which said products are made or manufactured, when such is not the fact. (July 24, 1936.)

1770. **False and Misleading Trade Name, Brands or Labels, and Advertising—Radios and Radio Supplies.**—Sun Radio Service & Supply Corporation, engaged in the business of retailing radios and radio supplies and in the sale and distribution of such products in

commerce within the District of Columbia and in States adjacent thereto, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Grigsby-Grunow Co. is a corporation which was originally incorporated under the laws of the State of Illinois on November 16, 1921, as Grigsby-Grunow-Hinds Co., the latter name having been changed to the former and present name, Grigsby-Grunow Co., on March 19, 1928. Since the date of its incorporation in 1921, the said corporation has manufactured refrigerators, radio receiving sets, and radio tubes, and has sold and distributed its said products, including radio receiving sets, under the trade name "Majestic", in commerce between and among various States of the United States and in foreign countries. It has expended large sums of money in promoting the sale of its products, including radio receiving sets, bearing the trade name "Majestic", by means of advertising inserted by it and by distributors of its said products in newspapers and magazines having interstate circulation.

It also has distributed in interstate commerce circulars and other printed matter relating to said radio receiving sets, with the result that the said corporation has built up and acquired a valuable good will in the word "Majestic" as applied to its products, including radio receiving sets. The said name "Majestic" is now vested in one Frank McKey as trustee in bankruptcy for the creditors of the said Grigsby-Grunow Co. The said trustee holds title thereto by virtue of authority vested in him by the United States District Court in the Northern District of Illinois.

Sun Radio Service & Supply Corporation in soliciting the sale of and selling its radio receiving sets in commerce as defined by the act, agreed to cease and desist from the use of the word "Majestic", either alone or in connection or conjunction with the word "International", or with any other word or words, or in any way in its advertising or as a trade name, brand, or designation for its said products, so as to import or imply that said products are products made or manufactured by Grigsby-Grunow Co., when such is not the fact. (July 27, 1936.)

1771. **False and Misleading Advertising—Whiskey.**—Continental Distilling Corporation, a corporation, engaged in the business of distilling whiskey, gin, and other alcoholic beverages and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Continental Distilling Corporation, in soliciting the sale of and selling its whiskey designated "Old Hickory" in interstate commerce,

agreed to cease and desist from the use in its advertisements and advertising matter of whatever character of any and all testimonials unless the same represent and are genuine, honest, and unbiased opinions of the author or authors, or purported author or authors thereof, arrived at from the personal use of said whiskey. (July 28, 1936.)

1772. False and Misleading Advertising—"Air Conditioners."—The Corozone Air Conditioning Corporation, a corporation, engaged in the manufacture of electrical devices for the purification of indoor air, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The words "Air Conditioning" signify the control by a mechanical device of the temperature, humidity, and circulation of the air in rooms, buildings, and railroad passenger trains; and the nonperformance of any one or more of these functions takes a device out of the class of air conditioners, according to the understanding of the trade and the purchasing public.

The Corozone Air Conditioning Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from advertising or offering for sale any of its said products as "Air Conditioners," and/or from stating and representing in advertisements or otherwise that the same will perform air conditioning, unless such devices fall within the class of air conditioners according to the understanding of the trade and the purchasing public. (July 28, 1936.)

1773. False and Misleading Brands or Labels—Thread and Yarn.—Sampson Solarz, an individual, trading as Solarz Thread & Yarn Co., engaged in business as a wholesaler and jobber of thread and yarn and in the sale and distribution of his products in interstate commerce, in competition with other individuals, partnerships, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Sampson Solarz, in soliciting the sale of and selling his yarns in interstate commerce, agreed to cease and desist from the use of the words "Silk" and "Satin," or of either of said words, on labels affixed to said products not composed of silk, the product of the cocoon of the silkworm; and from the use of the said words, or of either of them, in any way to designate, represent, or refer to said products so as to import or imply that said products are composed of silk, when such is not the fact. (July 28, 1936.)

1774. False and Misleading Advertising—Plywood and Veneers.—Roddis Plywood Co., a corporation, engaged in the sale and distribu-

tion, at wholesale, of plywood and veneers in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The wood known as Walnut is the product of the genus "Juglans" of the tree family scientifically called "Juglandaceae", of which there are several species. The "White pine group" has long been known to botanists, lumber technologists, and the public, and includes the species *Pinus strobus*, the *Pinus Lambertiana*, and the *Pinus monticola*. The species "*Pinus ponderosa*" is not a true white pine.

Roddis Plywood Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from—

(a) The use of the word "Walnut", either independently or in connection or conjunction with the word "Oriental", or with the word "Canadian", or with any other word or words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made of wood derived from trees of the walnut or "Juglandaceae" family, when such is not the fact;

(b) The use of the words "white pine", either independently or in connection or conjunction with any other word or words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made of wood derived from trees of the species *Pinus strobus*, *Pinus Lambertiana*, or *Pinus monticola*, when such is not the fact. (July 30, 1936.)

1775. **False and Misleading Brands or Labels—Leather and Saddle Soap.**—James Good, Inc., a corporation, engaged in the manufacture of a leather and saddle soap, and in the sale and distribution of said product, under the trade name of "Keystone Saddle Soap", in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

James Good, Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from representing and from setting forth on its labels affixed to its products of statements or representations that its said products conform to Government specifications. (July 30, 1936.)

1776. **False and Misleading Trade Names, Brands or Labels, and Advertising—Radios.**—Edward Ehrlich, an individual, trading as Fairway Distributing Co., engaged in the business of manufacturing so-called midget radio receiving sets and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Grigsby-Grunow Co. is a corporation which was originally incorporated under the laws of the State of Illinois on November 16, 1921, as Grigsby-Grunow-Hinds Co., the latter name having been changed to the former and present name, Grigsby-Grunow Co., on March 19, 1928. Since the date of its incorporation in 1921, the said corporation has manufactured refrigerators, radio receiving sets, and radio tubes, and has sold and distributed its said products, including radio receiving sets, under the trade name "Majestic", in commerce between and among various States of the United States and in foreign countries. It has expended large sums of money in promoting the sale of its products, including radio receiving sets bearing the trade name "Majestic", by means of advertising inserted by it and by distributors of its said products in newspapers and magazines having interstate circulation. It also has distributed in interstate commerce circulars and other printed matter relating to said radio receiving sets, with the result that the said corporation has built up and acquired a valuable good will in the word "Majestic" as applied to its products, including radio receiving sets. The said name "Majestic" is now vested in one Frank McKey as trustee in bankruptcy for the creditors of the said Grigsby-Grunow Co. The said trustee holds title thereto by virtue of authority vested in him by the United States District Court in the Northern District of Illinois.

The name "Bell" and/or the representation of a bell, when used in connection with sound reproduction and sound transmission in the electrical and radio fields, refers to the great inventor, Alexander Graham Bell and is the property of the said Alexander Graham Bell and his successors and assigns. The common-law title to the name "Bell", when used in connection with the aforesaid fields, is vested by long and continued use, since 1886, in the American Telephone & Telegraph Co., its subsidiaries and associates, and the Western Electric Co., Inc. Western Electric Co., Inc., manufactures radio sets, radio tubes, and radio batteries, and extensively advertises, sells, and ships such products in interstate commerce. It uses the name "Blue Bell" and the representation of a bell as a brand name to designate its said products.

Edward Ehrlich, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Majestic", either alone or in connection or conjunction with the words "Radio Corp.", or with any other word or words, or in any way as a trade name, brand, or designation for said products, so as to import or imply that said products are made or manufactured by Grigsby-Grunow Co. when such is not the fact. The said Edward Ehrlich also agreed to cease and desist from the use of the word "Bell", either independently or in conjunction with the word "International", or with any other word or words, or in any way as a trade name, brand, or designation for his products offered for sale and sold by him in

interstate commerce, so as to import or imply that said products are products made or manufactured by American Telephone & Telegraph Co., its subsidiaries or associates, or the Western Electric Co., Inc., when such is not the fact. (July 30, 1936.)

1777. **False and Misleading Advertising—Watches and Spectacles.**—Benedict Oskin, an individual trading under the name and style of United States Supply Co., engaged in the sale by mail orders of watches, and since December 1935, in the sale by mail orders of spectacles, in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Benedict Oskin, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from displaying in comparatively large type, in his advertisements of watches, the words "Elgin," "Free," and "20," and printing in comparatively small and inconspicuous type such words as "& misc. catalogue," "if satisfactory, costs 99 cents," or in such other arrangement as to have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that they will receive an Elgin watch, or receive a watch for 20 cents, or receive a thin model, etc.; failing to disclose in his "watch catalogue" that the watches listed therein are second-hand reconditioned watches; displaying in comparatively large type, in his advertisements of spectacles, the words "SEND ONLY 20¢", either alone or in connection with a pictorial representation of a pair of spectacles, and the remainder of such advertisements in comparatively small and inconspicuous type, with the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that they can secure a pair of spectacles for twenty cents; the use of any words in such sizes and arrangements, either independently or in connection or conjunction with any pictorial representation, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers in any material way in respect to the true meaning of such advertisements. (Aug. 3, 1936.)

1778. **Disparaging and False and Misleading Trade or Corporate Name and Advertising—Wood Fibre Ornaments, Etc.**—W. M. Jacobson, an individual, trading as Wonder Manufacturing Co., engaged in the sale and distribution of wood fibre ornaments and other articles usually carried by a gift shop, under the trade name of "Wonder-Tex," in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

W. M. Jacobson, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from:

(a) The use of the word "Manufacturing" as a part of or in connection with the trade name under which to carry on his said business; and from the use of the word "Manufacturing" in any way so as to import or imply that said W. M. Jacobson is a manufacturer or that he owns, controls, or operates any mill or factory wherein the products which he sells and distributes are made or fabricated, when such is not the fact;

(b) Making false and misleading statements and representations regarding the Syracuse Ornamental Co., of Syracuse, N. Y., or its business; such as, that he is identified with said company, that he is its successor or agent; that the products which he sells are the product of that company, or that said company has gone out of business, or that he has purchased the machinery of said company and equipped a plant in Chicago and resumed its business; or any similar false and misleading statement or representation respecting said company, or to injure said Syracuse Ornamental Co. in its business. (Aug. 3, 1936.)

1779. **False and Misleading Advertising—Pencils.**—Bertram A. Straus, an individual, trading as Columbia Pencil Co., engaged as a jobber in the sale and distribution of lead pencils in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Bertram A. Straus, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising of the phrases "Direct From The Factory" and "From The Factory To The Ultimate Consumer", or of either of them alone or in connection or conjunction with the statement "We have taken the middlemen by the seats of their trousers and tossed them out" or with any other statement or similar meaning so as to import or imply that the said Bertram A. Straus makes or manufactures said products or that he actually owns and operates or directly and absolutely controls the plant or factory wherein said products are made or manufactured. (Aug. 3, 1936.)

1780. **False and Misleading Advertising—Dresses, Uniforms, etc.**—Claire Frocks, Inc., a corporation, engaged in the business of manufacturing women's dresses and aprons, men's and women's uniforms and in the sale and distribution of said products, as also of men's shirts and women's hosiery not made or manufactured by it, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Claire Frocks, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating or

representing in its advertisements or advertising matter that a dress or dresses is or are given away free, when such purported gift is in fact bought and paid for by the services performed by the agent in the sale of merchandise for the said Claire Frocks, Inc. The said Claire Frocks, Inc., also agrees to cease and desist from the use of the word "manufacturers" either alone or in connection or conjunction with any other word or words in its advertisements and advertising matter relating to products which it does not make or manufacture; and from the use in its said advertising of the word "manufacturers" or of any other word or words or statement such as "Brought to you direct from our big factory" so as to import or imply that the said Claire Frocks, Inc., makes or manufactures its products or that it actually owns and operates or directly and absolutely controls the plant or factory in which are made or manufactured the products so advertised or sold by it, when such is not the fact. (Aug. 4, 1936.)

1781. **False and Misleading Advertising—Aspirin.**—Union Pharmacal Co., Inc., a corporation, engaged in the manufacture of aspirin and in the sale and distribution of same in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Union Pharmacal Co., Inc., in soliciting the sale of and selling its aspirin product in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter distributed in interstate commerce of statements and representations that its product is free from uncombined salicylic acid; that its product is tasteless; that its product is a remedy for colds or cold infections; that its product will relieve pain generally, unless such statement or representation is so limited as to apply to a few simple pains such as experience shows can usually be relieved by the use of aspirin; that its product complies with government standard, or any other similar statement or representation importing that said product has been examined and approved by any department or bureau of the Government of the United States, when such is not the fact. (Aug. 5, 1936.)

1782. **False and Misleading Advertising—Piston Rings.**—Ramsey Accessories Manufacturing Corp., engaged in the manufacture of piston rings having an inner spring, for use in automobiles; and in the sale and distribution of said products, under the trade name of "Ramco", in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Ramsey Accessories Manufacturing Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce: that its business doubled in January and/or in February 1935, or that it tripled during the month of March 1936; and from any other exaggerated or inaccurate statement or representation respecting the increase of its business at any time; that its piston rings represent sixteen years' concentration, and/or that they are the result of exclusive patents on spring ring design; that automobile repair men can make a profit of \$16 on each "Ramco Job", or that automobile motors can be overhauled for a cost of \$18, unless such statements are limited with respect to the type of car to be overhauled, or to the kind and amount of work to be done, parts supplied, etc., in such a way as to bring the cost to the car owner and the profit of the repair man within the range of probability. (Aug. 4, 1936.)

1783. False and Misleading Trade Name and Advertising—Pianos.—Schiller-Cable Piano Manufacturing Co., engaged in the manufacture of pianos and in the sale and distribution thereof, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The term "Grand Piano" means to the trade and the general public a piano having strings placed horizontally, gravity action, and certain tonal and other qualities not found in other types of pianos.

Schiller-Cable Piano Manufacturing Co., in soliciting the sale of and selling its pianos in interstate commerce, agreed to cease and desist from the use of the word "Grand" as a trade name by which to designate or describe any piano not having its strings placed horizontally, with gravity action, and not possessing those tonal and other qualities associated by the trade and the general public with grand pianos; stating and representing in advertisements or advertising matter that its piano heretofore sold and distributed under the trade name of "Schiller Vertical Grand" is "a real grand", or "a big grand", or "actually a grand piano acoustically", or that its "tone is equal to that of the conventional size grand" piano. (Aug. 5, 1936.)

1784. False and Misleading Advertising—Hats.—Hyman Abish and Joseph Roger, copartners, trading as New York Hat and Cap Co., engaged as jobbers in the sale and distribution of ladies' hats in interstate commerce, in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hyman Abish and Joseph Roger, in soliciting the sale of and selling their products in interstate commerce, agreed, and each for himself agreed, to cease and desist from the use of the word "Panama" either independently or in conjunction with the word "Toyo" or with any other word or words in its advertising or in any way to describe a product not made from the leaves of the Jipajapa in accordance with the process used in the manufacture of Panama hats; and from the use of the word "Panama" in any way as descriptive of hats so as to import or imply that such products are Panama hats, when such is not the fact. (Aug. 5, 1936.)

1785. **False and Misleading Advertising—Valve Lubricants.**—Herman E. Ballard, an individual, engaged in the manufacture of valve lubricants and in the sale and distribution of said products in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Merco Nordstrom Valve Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Oakland, in the State of California. It has been for more than a year past engaged in the manufacture of tapered rotary plug valves and of lubricants adapted for use in such valves, and in the sale and distribution of such products, under the trade name of "Merco", in commerce, between and among various States of the United States; causing the same, when sold, to be shipped from its place of business in the State of California to purchasers thereof located in a State or States other than the State of California. In the course and conduct of its business, Merco Nordstrom Valve Co. was at all times referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

Herman E. Ballard, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter distributed in interstate commerce that any of his products "is an exact duplicate" of, or that he duplicates the lubricants sold under the Merco brand, when such is not the fact. (Aug. 5, 1936.)

1786. **False and Misleading Advertising—"Radium Cones."**—Charlotte Thomas, an individual, trading as Thomas Radium Cone Co., engaged in the manufacture of so-called "Radium Cones", and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Charlotte Thomas, in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist from:

(a) Stating and representing that her "Radium Cones" have any therapeutic or curative value for any bodily ailment or disease whatever;

(b) Stating and representing that the drinking of water activated by her "Radium Cones" is a cure for or will ameliorate the symptoms of any human ailment, further than such benefits as may arise from the drinking of an increased quantity of water;

(c) Publishing or causing to be published and distributed statements or purported opinions of physicians or medical experts in reference to the therapeutic value of radioactive therapy not specifically applicable to her product; unless the fact that such statements or opinions were not made specifically in connection with her product is also plainly published or printed in connection therewith; and

(d) Stating and representing that the Mayo Clinic uses radium activated water for treating its patients. (Aug. 7, 1936.)

1787. False and Misleading Brands or Labels and Advertising—Tobacco, Pipes, Etc.—Wally Frank, Ltd., a corporation, engaged as a tobacconist in the sale and distribution of tobacco, pipes, and accessories; as an importer of finished and unfinished briar pipes, and of blocks of briar root to be manufactured into pipes; and as an assembler of pipes; and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Wally Frank, Ltd., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter distributed in interstate commerce of any pictorial representation of the British Royal Coat of Arms, or Official Seal of the King of England, either independently or in connection or conjunction with the words "Best British Brand", "Wally Frank, Ltd., London", or any other words or phrases having the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that Wally Frank, Ltd. is a British Company, or that it has an office and does business in London, or that it is registered under the British Companies Act, or that it manufactures the pipes which it sells; the use of any word or words, or of any pictorial representation on its label or in other advertisements or advertising matter, in connection with the sale and distribution of its products in interstate commerce, which may import or imply that such products are manufactured in or imported from any foreign country, when such is not the fact; the words "sold direct to you", or any other similar words or

expressions importing or implying that the pipes which it sells move directly from the manufacturer to the user, when such is not the fact; and words and figures which exaggerate the true value of its products, and represent the same to be worth a sum larger than the price at which they are regularly sold and intended to be sold in the usual course of trade. (Aug. 10, 1936.)

1788. **False and Misleading Brands or Labels—Soaps and Cosmetics.**—Castilian Products Corp., a corporation, engaged in the business of manufacturing soaps and cosmetics and in the sale and distribution thereof in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Castilian Products Corp., in soliciting the sale of and selling its soap products in interstate commerce, agreed to cease and desist from the use of the words "Imported Olive Oil" as a brand or label or to designate said products, the fatty content of which is not composed wholly of imported olive oil; and from the use of the word "Olive", either alone or in connection or conjunction with the words "Imported" and "Oil", or with either of said words, or with any other word or words, or in any way, so as to import or imply that the fatty content of said soap products is composed wholly of olive oil, when such is not the fact. The said Castilian Products Corp. also agrees to cease and desist from the use on its stationery or printed matter of whatever character of the word "Importers", so as to import or imply that the said corporation is an importer of the products offered for sale and sold by it, when such is not the fact. (Aug. 10, 1936.)

1789. **False and Misleading Brands or Labels—Cotton.**—Ansley L. Coleman, an individual, trading as New Aseptic Laboratories, engaged in the manufacture of surgical supplies, including absorbent and surgical cotton, and in the sale and distribution of said products in interstate commerce, in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The words "Sterilized" and "Aseptic" mean to the purchasers of absorbent and surgical cotton, including both the medical profession and laymen, that the contents of packages so marked and labeled are free from bacteria both at the time of final packaging by the manufacturer and at the time of the sale of such packages to the consuming purchasers thereof.

Ansley L. Coleman, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Sterilized" or "Aseptic" as a brand, mark, or label to describe

or designate products which are not free from bacteria both at the time of the final packaging by the manufacturer and at the time of the sale of such packages to the consuming purchasers thereof. (Aug. 18, 1936.)

1790. **False and Misleading Advertising—Radios.**—Philco Radio & Television Corp., a corporation, engaged in the sale and distribution of radio receiving sets in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Philco Radio & Television Corp., in soliciting the sale of and selling its radio receiving sets in interstate commerce, agreed to cease and desist from the use in its broadcasts over the radio or in other similar advertising matter of statements or representations, the effect of which is to import or imply to listeners-in that the radio announcer has actually tuned a designated foreign broadcasting station and/or that the musical or other program listened to is actually picked up from the designated foreign broadcasting station and is being rebroadcast through the local station or network over which the announcer is talking, or that the designated foreign broadcasting station was originally picked up and the recording made therefrom, when such are not the facts. Said corporation also agrees to cease and desist, when referring to the possibilities of shortwave radio reception, from the use of statements such as "With the new Philco I can tune what I want now when I want it" or of any other statements or representations of similar meaning so as to import or imply that listed or other foreign radio programs are available or may be obtained with sufficient or a reasonable degree of clarity whenever desired by a prospective listener-in, regardless of static, atmospheric conditions, signal strength, or other reception-interfering cause. (Aug. 19, 1936.)

1791. **Failure to Disclose—Baseball Caps, Etc.**—Lewis Tannenbaum, an individual trading as Sha-Po Manufacturing Co., engaged in the business of manufacturing novelty headgear, such as baseball caps, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Lewis Tannenbaum agreed to cease and desist from selling or offering for sale in interstate commerce baseball caps or other novelty headgear which are or is manufactured from second-hand, old, worn, used, or discarded felt or other materials; unless and until there is stamped upon, affixed, or attached to said products in a conspicuous place so as to be easily and readily seen, some word or words clearly indicating that said products are not made or manufactured from new and unused

materials but are made or manufactured from second-hand, old, worn, used, or discarded materials. (Aug. 19, 1936.)

1792.—False and Misleading Brands or Labels, Trade Names, and Advertising—Lubricating Oil.—Gilbert Alexander Sheard, an individual, trading as Supreme Lubricants Co. and as Lubricating Specialties, engaged in the business of manufacturing lubricating oil containing graphite and in the sale and distribution of such product in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Pyroil Co. is the trade name under which one Dean Ladd Kidder, the widow of William V. Kidder and executrix of the last will and testament of the said William V. Kidder, is now and for a number of years last past has been engaged in the business of manufacturing a graphited lubricant and in the sale and distribution thereof under the trade name or designation "Pyroil" in commerce between and among various States of the United States, causing the same when sold to be shipped from her place of business at La Crosse in the State of Wisconsin to purchasers thereof located in other States of the United States. Said product has been sold principally through distributors located in various States and who have extensively advertised the same by means of radio broadcasts. Said product was packed, shipped, and sold in metal containers having affixed thereto labels, the color scheme of certain of which was yellow and white with the following words printed in black:

Genuine
 PYROIL
 Heat-Proof
 LUBRICATION
 Process
 TOP OIL
 A
 PYROIL

Labels affixed to certain other of said containers were green and white and bore the words printed in black:

Genuine
 PYROIL
 Heat-Proof
 LUBRICATION
 Process
 CRANK CASE
 OIL
 B
 PYROIL

and which products so advertised, labeled, and sold in interstate commerce have become well known to and recognized by the trade and purchasing public as and to be a product produced and sold, first by William V. Kidder and, subsequent to his death, by his widow and executrix, trading as Pyroil Co.

Gilbert Alexander Sheard, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from:

(a) The use of the word "Pyroil" on measuring cups used in connection with the sale or the offering for sale of his said product which is not made or manufactured by "Pyroil Company" referred to in paragraph 2 hereof; and from the use of the word "Pyroil" in any way so as to import or imply that the product sold and offered for sale by him is that product made or manufactured by "Pyroil Company" when such is not the fact.

(b) The use of any and all statements, orally or otherwise made, to the effect that the product offered for sale and sold by him in interstate commerce is that product made or manufactured by "Pyroil Company" when such is not the fact.

(c) The use on the labels affixed to his said product or in any other way of the words "Fyroil" or "Powroil" or of any other word or words simulating the word "Pyroil", either alone or in connection or conjunction with the word "original" or any other word of similar meaning as a brand or trade name for or otherwise to designate his product so as to import or imply that said product is that product made or manufactured by "Pyroil Company." (Aug. 20, 1936.)

1793. **False and Misleading Advertising—Baby Chicks.**—H. E. Ohls, an individual trading as Ohls Poultry Yards & Hatchery, engaged in the hatchery business and in the sale and distribution of baby chicks in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

H. E. Ohls, in soliciting the sale of and selling his chicks in interstate commerce, agreed to cease and desist from stating or representing in his advertising of whatever character that he has sold over 1,000,000 or other number of chicks in a designated State or place and/or during a specified period of time, when the stated or indicated number of chicks so sold is inaccurate and/or much in excess of the actual number of chicks so sold. (Aug. 20, 1936).

1794. **False and Misleading Advertising—Alcoholism Treatment.**—Eldon M. Graves, an individual doing business under the name and style of Graves Laboratories, engaged in the sale and distribution, under the trade name of "Graves' Home Treatment for Alcoholism", in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the

following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Eldon M. Graves, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter of statements and representations that his product is a specific treatment for alcoholism, or that it will cure the same; stating and representing in advertisements or advertising matter that his product or the advertising matter used in selling the same has been submitted to, passed upon, or approved by any bureau or department of the United States Government, or by an official thereof; stating and representing in advertisements or advertising matter that said product is safe in all cases, and/or from statements or representations importing or implying that the same is safe for self-administration; stating and representing in advertisements and advertising matter that said product is prepared in his laboratories, or that the major part thereof is prepared in his laboratories, when such is not the fact; the use of advertisements and advertising matter of purported guarantees which are not carried out, or are carried out only upon conditions not expressed or referred to in such advertisements. (Aug. 20, 1936.)

1795. **False and Misleading Brands or Labels—Luggage.**—Rubin E. Rappeport, an individual doing business as R. E. Rappeport, engaged in the manufacture of luggage, chiefly of the "Gladstone" type, and in the sale and distribution of said products in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

As a rule, all hides intended for leathers, other than sole, belting, and harness, and some specialities, are split or skived. The outer or top cut or layer of a split hide may be, and generally is, distinguished as a grain, but any piece of leather ordinarily made from a split hide and not described as a split is accepted and understood by the trade and purchasing public to be the top or grain cut.

Rubin E. Rappeport, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "cowhide", either independently or in connection or conjunction with any other word or words, or in any way, as a brand or label for his products, so as to import or imply that said products are made or composed of leather made from the top or grain cut or layer of cowhide; provided that, if said products are composed of leather made from the inner or flesh cut of the hide and the word "cowhide" is used as descriptive thereof, then, in that case, the word "cowhide" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "cowhide" is

printed, so as to indicate clearly that said products are not composed of leather made from the top or grain cut or layer of the cowhide. (Aug. 14, 1936.)

1796. **False and Misleading Brands or Labels and Advertising—Aspirin.**—Nostane Products Corp., engaged in the manufacture of pharmaceutical products, including aspirin, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Nostane Products Corp., in soliciting the sale of and selling its aspirin in interstate commerce, agreed to cease and desist from stating and representing, on cartons, labels, or other advertisements or advertising matter that its aspirin is tasteless; that its aspirin will relieve colds, or do more than temporarily allay the pain resulting from colds or the conditions caused thereby; that its aspirin, when used for the treatment of headaches, neuralgia, or muscular pains, is anything more than a palliative or will accomplish more than a temporary allaying of the pain caused by simple cases of said ailments; nothing herein contained shall be construed as preventing said Nostane Products Corp. from making proper therapeutic claims or representations based upon reputable medical opinion or recognized medical or pharmaceutical authority. (Aug. 28, 1936.)

1797. **False and Misleading Prices and Advertising—Shaving Cream.**—Charles Levin and Isadore Levin, copartners trading as Levin Brothers, engaged in the sale and distribution in interstate commerce of two certain brands of shaving cream, one designated "Elgin" and the other "Stetson", in competition with other copartnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Charles Levin and Isadore Levin, in soliciting the sale of and selling said shaving cream products in interstate commerce, agreed, and each for himself agreed to cease and desist from causing said products, or either thereof, to be marked with any fictitious or exaggerated price, in excess of the price for which said product is sold or intended to be sold in the usual course of trade. Said copartners, and each of them, also agreed to cease and desist from the use on their cartons or in any other way of the word "Laboratories" so as to import or imply that they make or manufacture said products or that they actually own and operate or directly and absolutely control the plant, factory, or laboratory in which said products are made, manufactured, or compounded, when such is not the fact. (Aug. 31, 1936.)

1798. **Failure to Disclose—Baseball Caps, Etc.**—Joe Stovitzky, an individual trading as Capitol Cap and Novelty Co., engaged in the

business of manufacturing sport caps, including baseball caps, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joe Stovitzky agreed to cease and desist from selling or offering for sale, in interstate commerce, baseball caps or other headwear which are or is made or manufactured from second-hand, old, worn, used, or discarded felts or other materials, unless and until there is stamped upon, affixed, or attached to said products in a conspicuous place so as to be easily and readily seen some word or words clearly indicating that said products are not made or manufactured from new or unused felts or materials, but are made or manufactured from second-hand, old, worn, used, or discarded felts or materials. (Aug. 31, 1936.)

1799. **False and Misleading Brands or Labels and Advertising—Cotton, Bandages, Etc.**—The Forest City Rubber Co., a corporation, engaged in the sale and distribution of absorbent cotton, gauze bandages, adhesive tape, foot aids, and the like in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Forest City Rubber Co., in soliciting the sale of and selling its products or any of them in interstate commerce, agreed to cease and desist from the use on the containers of its said products or product of the wording "Sterilized" or of either of the groups of words "Guards Against Infection", "Guards the Health", and "Practical for all Surgical and Household Needs", or of any other word or group of words of similar meaning so as to import or imply that said products, or any of them, are or is sterile or free from bacteria when purchased by the consuming public, if and when such is not the fact. Said corporation also agreed to cease and desist from the use of the statement "This cotton was thoroughly sterilized during process of manufacture", as descriptive of its product sold or offered for sale in interstate commerce, unless, when said product actually was sterilized during the process of manufacture and such statement is used to describe said product, then in that case said statement shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the words forming said statement are printed so as to indicate clearly that there is no assurance that said product continues to be, remains and/or is sterile at the time of its purchase by the consuming public. (Aug. 31, 1936.)

1800. **False and Misleading Brands or Labels and Advertising—Aspirin.**—The Aspirin Co. of America, a corporation, engaged in the

manufacture of aspirin, and in the sale and distribution of said product, through its subsidiary, American Pharmaceutical Co., Inc., in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Aspirin Co. of America and American Pharmaceutical Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from stating and representing on labels or in other advertisements or advertising matter; that their product has been freed from all uncombined salicylic acid, thereby preventing gastric disturbances; that their product is odorless and tasteless, when such is not the fact. (Sept. 1, 1936.)

1801. False and Misleading Brands or Labels—Tapestry.—P. Lindhorst, Inc., a corporation, engaged in the importation of tapestry and tapestry wool, and in the sale and distribution thereof, under the trade names of "Lindhorst's Lady Tapestry Wool" and "Lady's Tapestry Wool", in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

P. Lindhorst, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Mothproof" as a stamp, brand, or label on its products distributed in interstate commerce; and from the use of the word "Mothproof", or of any other similar word which may import or imply that its products are immune against the ravages of moths, when such is not the fact. (Sept. 9, 1936.)

1802. False and Misleading Prices and Advertising—Anti-Hog Cholera Serum, Syringes, Etc.—Timothy Wiglesworth, an individual trading under the name and style of Brawner Serum Co., engaged in dealing in Anti-hog Cholera Serum and Hog Cholera Virus produced by the Brawner Serum Co. of Converse, Mo., and in animal biologics and Pharmaceuticals produced by others than said Brawner Serum Co., and in the sale and distribution of said products in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Timothy Wiglesworth, in soliciting the sale of and selling his said products in interstate commerce, agreed to cease and desist from the use on letterheads or other advertisements or advertising matter of the words "producers Animal Biologics—Pharmaceuticals", in connection with the words "Brawner Serum Company", or in any way which may import or imply that said Brawner Serum Co. is the pro-

ducer of the animal biologics and pharmaceuticals which he sells and distributes, when such is not the fact; making exaggerated statements of the retail selling value of syringes offered as a premium for the purchase of products, and under-stating or under-estimating the cost of the products included in combination deals, to any material extent, so that customers are misled and deceived. (Sept. 9, 1936.)

1803. **False and Misleading Advertising—Baby Chicks.**—W. J. Tibbals and Rose Tibbals, copartners trading under the firm name and style of Roselawn Poultry Farm, engaged in the sale and distribution of baby chicks in interstate commerce in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

W. J. Tibbals and Rose Tibbals, in soliciting the sale of and selling their baby chicks in interstate commerce, agreed to cease and desist from the use in advertising matter, or in any other way, of statements or representations to the effect that competitive hatcheries engaged in the sale of sexed chicks are, because of such engagement, unscrupulous racketeers, or that the sale of sexed chicks by said competitive hatcheries is a "racket" and that said competitive hatcheries, therefore, are not scrupulous. The said copartners also agreed to cease and desist from stating or representing in their advertising or otherwise that the mortality rate among sexed chicks has been found to be higher or different from the mortality rate of unsexed chicks, or that the average accuracy of chick sexers is only 71 percent and not 90 percent as claimed by experts, or that sexed pullets cost at least 10 percent more than unsexed chicks and that such increased cost may run as high as 50 percent more, when such are not the facts. (Sept. 9, 1936.)

1804. **False and Misleading Advertising—Rings.**—Pakula and Co., engaged in the sale and distribution at wholesale, in interstate commerce, of novelty jewelry, consisting chiefly of rings; and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Pakula and Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce that its rings are "Cameo", "Intalio", or "Hematite" rings, when such is not the fact; that the mountings of its said rings are of gold, chromium, or rhodium, when such is not the fact; that it is a manufacturers' distributor, when such is not the fact. (Sept. 9, 1936.)

1805. **False and Misleading Trade Names and Brands or Labels—Radios.**—Walter Spiegel, an individual, trading under the names “Regal Manufacturing Company” and “Playland Supply Company”, engaged in the business of manufacturing radio sets and in the sale and distribution of the same in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Walter Spiegel, in soliciting the sale of and selling its radio sets in interstate commerce, agreed to cease and desist from the use of the word “Majestic” either alone or in connection or conjunction with the word “International” or with any other word or words as a brand or designation for his said products which are not products manufactured by Grigsby-Grunow Co., and from the use of the word “Majestic” in any way in offering for sale or selling his said products so as to import or imply that said products are products manufactured by Grigsby-Grunow Co., when such is not the fact. (Sept. 9, 1936.)

1806. **False and Misleading Brands or Labels—Jewelry Findings, Etc.**—Algren Manufacturing Co., Inc., a corporation, engaged in the manufacture of jewelry findings, including wrist-watch buckles, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Algren Manufacturing Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words and symbols “12 K. Gold Shell” as a stamp or brand on any of its said products, unless such products contain a layer or shell of gold of substantial thickness on the outside, and unless said words are preceded by a fraction designating the correct proportion of the weight of the shell to the weight of the entire article. (Sept. 9, 1936.)

1807. **Failure to Disclose—Baseball Caps, Etc.**—American Needle and Novelty Co. engaged in the manufacture of novelty headwear, including so-called “baseball caps”, and in the sale and distribution of said products, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

American Needle and Novelty Co., in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist from selling or offering for sale hats or caps manufactured from felts obtained from second-hand, old, used, and discarded men’s or women’s

hats, unless and until there is stamped upon, affixed, or attached, to said products, in a conspicuous place so as to be readily and easily seen, a word or words clearly indicating that said hats and caps are not manufactured from new and unused felts, but are manufactured from second-hand, old, used, and discarded felt hats. (Sept. 9, 1936.)

1808. **Failure to Disclose—Baseball Caps, Etc.**—Aviation Headwear Manufacturing, Inc., a corporation, engaged in the business of manufacturing novelty headwear, including baseball caps, and in the sale and distribution thereof, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Aviation Headwear Manufacturing, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling or offering for sale, baseball caps or other headwear which are or is made or manufactured from second-hand, old, worn, used, or discarded felts or other materials, unless and until there is stamped upon, affixed to, or attached to said products in a conspicuous place so as to be easily and readily seen some word or words clearly indicating that said products are not made or manufactured from new or unused felts or materials, but are made or manufactured from second-hand, old, worn, used, or discarded felts or materials. (Sept. 9, 1936.)

1809. **Failure to Disclose—Hats and Caps.**—Lessing Hat Co., Inc., a corporation, engaged in the manufacture of novelty felt hats and caps from felts obtained from old, used, discarded, and second-hand hats, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Lessing Hat Co., Inc., in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist from selling or offering for sale hats or caps manufactured from felts obtained from second-hand, old, used, and discarded men's felt hats, unless and until there is stamped upon, affixed, or attached to said products, in a conspicuous place so as to be readily and easily seen, a word or words clearly indicating that said hats and caps are not manufactured from new and unused felts, but are manufactured from felts obtained from second-hand, old, used, and discarded felt hats. (Sept. 9, 1936.)

1810. **False and Misleading Advertising—Chemical Products.**—The Hygienic Products Co., a corporation, engaged in the sale and distribution of chemical products, including water softeners and cleansers, under the trade names of "Hy-Pro", "Sani-Flush" and "Mel'o", in interstate commerce, in competition with other corporations, individ-

uals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Hygienic Products Co., in soliciting the sale of and selling its said product, "Hy-Pro", in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter (a) of the word "Germicide" without qualification, or of any other word or words importing or implying that by its use all micro-organisms can be killed or destroyed; (b) of the words "Disagreeable odors go", or of any other word or words importing or implying that by its use all disagreeable odors can be killed or destroyed; and (c) of the words "Made by the Makers of Sani-Flush" so as to import or imply that the said product is made by the Hygienic Products Co., when such is not the fact. (Sept. 9, 1936.)

1811. False and Misleading Advertising—Furniture.—Woodward & Lothrop, a corporation, engaged in business as a general retail department store and in the sale and distribution of its merchandise within the District and in States adjacent thereto, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Woodward & Lothrop, in soliciting the sale of and selling its products in commerce as defined by the act, agreed to cease and desist from statements or representations in its advertising, or in any other way, so as to import or imply that the wood of which its "Philippine Mahogany" furniture is made or manufactured is in fact mahogany and has the same qualities and characteristics as are possessed by wood derived from trees of the genus "Swietenia" of the "Meliaceae" family, and/or that its said "Philippine Mahogany" furniture is made of wood whose qualities and characteristics are other than those possessed by wood of the "Dipterocarpaceae" or "Lauan" family. (Sept. 9, 1936.)

1812. False and Misleading Advertising—Men's Suits.—A. Goldman, an individual trading under the name and style of Lord Baltimore Tailoring Co., engaged in the manufacture of men's suits to order, and in the sale and distribution thereof in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

A. Goldman, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Fine Woolens" in his advertisements or advertising matter, or otherwise to describe, designate, or represent products not composed wholly of wool; and the use of the word "Wool" in any way which

may have the power or liability to misguide or delude purchasers in any way respecting the wool content of his product. (Sept. 9, 1936.)

1813. **False and Misleading Trade or Corporate Name and Advertising—Silk Fabrics.**—Susquehanna Silk Mills, a corporation, engaged in the business of manufacturing silk fabrics and in the sale and distribution thereof under its aforesaid corporate name, and also under its trade mark "The Suskana Silks" in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Susquehanna Silk Mills, in soliciting the sale of and selling its "Gracette" fabrics in interstate commerce, agreed to cease and desist from the use of the word "Silk" or "Silks" as part of or in connection or conjunction with its corporate or trade names, respectively, in advertisements or advertising matter, or in any other way, so as to import or imply that the fabrics referred to in said advertising are silk, when such is not the fact. (Sept. 9, 1936.)

1814. **False and Misleading Trade Name and Advertising—Dry Dog Food.**—Fanciers' Foods, Inc., a corporation, engaged in the sale and distribution in interstate commerce of dry dog food, under the trade name or brand of "Prest O' Meat", in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Fanciers' Foods, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Meat" as a part of its trade name for said product, or otherwise in advertisements or advertising matter so as to import or imply that the said product is composed of meat. If the product is composed in substantial part of meat and the word "meat" is used to designate the meat content thereof, then in such case the word "Meat" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "meat" is printed so as to indicate clearly that the product is not composed wholly of meat but is composed of a product or products other than meat; the use of claims or representations that its said product constitutes a scientifically complete food, or a complete food for puppies or dogs of all breeds, unless and until a standard or authoritative definition of what constitutes a balanced ration of diet for dogs has been properly determined; stating or representing that its product contains milk, without at the same time giving the information that such milk content is not whole milk, but that it is dried skimmed milk, dried buttermilk, or whatever else the same may be; stating or representing that twenty years experience in practical dog breeding and feeding

have been had; the use of the word "Manufacturers" in its advertisements or advertising matter; and from the use of the word "Manufacturers", or any other word having a similar meaning, in any way which may import or imply that said corporation manufactures the products which it sells and distributes, when such is not the fact. (Sept. 9, 1936.)

1815. **False and Misleading Advertising—Baby Chicks.**—Roy T. Ehrenzeller, an individual trading as Maple Lawn Hatchery, engaged in the business of hatching baby chicks, and in the sale and distribution of such merchandise in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Roy T. Ehrenzeller, in soliciting the sale of and selling his chicks in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter of statements, photographs, cuts, or other types of material which have been copied and appropriated from the advertisements or advertising matter of any competitor or competitors; and from the use of any advertising which, by the words, phrases, statements, photographs, or designs therein contained, causes or has the tendency to cause purchasers to believe that the business of the said Roy T. Ehrenzeller is connected or associated with the business of a competitor or competitors and/or that the merchandise so advertised, offered for sale, and sold by the said Roy T. Ehrenzeller is the same as that of a competitor or competitors, when such are not the facts. The said Roy T. Ehrenzeller also agreed to cease and desist from the use in his advertising of whatever character of any and all statements or representations so as to import or imply that the said Roy T. Ehrenzeller maintains and operates the flocks which produce the eggs from which the chicks he advertises and sells are hatched, when such is not the fact. (Sept. 9, 1936.)

1816. **False and Misleading Prices and Advertising—Jewelry Findings, Etc.**—Morays Watch Case Co., a corporation, engaged in the manufacture of jewelry findings, including electro-plated wrist-watch bracelets, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Morays Watch Case Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of advertisements or other printed matter of exaggerated or misleading statements or representations concerning the value of or the price at which said products, or any of them, are sold or intended to be sold in the usual course of trade. (Sept. 9, 1936.)

1817. **False and Misleading Advertising—Men's Clothing.**—The Hutchins Pants Co., a corporation, engaged, under the trade name "Dunlap Pants Company" in the sale and distribution of men's clothing, including pants, breeches, jackets, and the like, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Hutchins Pants Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising or printed matter of the expressions "tailored to fit" or "made to fit" or from otherwise stating or representing, through salesmen or by other means, that products offered for sale and/or sold by it are tailored, or made, to the measure of individual customers, when such is not the fact. The said corporation also agreed to cease and desist from the use of any and all means or methods of soliciting and accepting orders for products with the power and liability to misguide and delude customers or prospective customers into the belief that the products ordered will be tailored and made to individual measure, when such is not the fact. The said corporation further agreed to cease and desist from stating or representing, in its advertising or in any other way, that garments are given away free, when such purported gift is in fact bought and paid for by the services performed by the agent in the sale of merchandise for the said The Hutchins Pants Co. The said corporation also agreed to cease and desist from the use, in its advertising or printed matter or in any other way, of statements such as "direct to wearer" or "buy your garments direct", or of other statement or representation of similar meaning, so as to import or imply that the said The Hutchins Pants Co. makes or manufactures the products which it sells and/or that it actually owns and operates or directly and absolutely controls any factory in which said products are made or manufactured. (Sept. 9, 1936.)

1818. **Failure to Disclose—Baseball Caps.**—Harry Kean, Samuel Weisman, and William Albaum, copartners trading under the firm name and style of Mode Novelty Co., engaged in the business of manufacturing novelty felt hats and in the sale thereof in interstate commerce, in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Harry Kean, Samuel Weisman and William Albaum agreed, and each of them agreed, to cease and desist from selling, or offering for sale in interstate commerce, baseball or novelty caps which are manufactured or made from second hand, old, worn, used, or discarded felt

or other materials, unless and until there is stamped upon, affixed, or attached to said products in a conspicuous place, so as to be easily and readily seen, some word or words clearly indicating that the said products are not made or manufactured from new and unused materials, but are made or manufactured from second hand, old, worn, used, or discarded materials. (Sept. 10, 1936.)

1819. **False and Misleading Brands or Labels—Cosmetics.**—Luzier's, Inc., a corporation, engaged in the business of manufacturing cosmetics and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Luzier's, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use on labels affixed to its said products of statements or representations to the effect that its "Hair Tonic", applied to the hair, will promote or encourage hair growth, or that its product "Muscle Oil", applied to the outer surface of a double chin, will tighten the muscles and eliminate the defect, or that its products "Marvelo" and "Lu-Mar", or either of them, will arrest, stop, or remove age lines or wrinkles, or that other of its products, namely "Massage Cream" or "Lu-Tone", will nourish and strengthen tissues of the skin to which they are, or either of them is, externally applied, when such are not the facts. (Sept. 10, 1936.)

1820. **False and Misleading Advertising and Misrepresenting Product—Coupons and Advertising Matter.**—M. A. Willis, engaged in the sale and distribution, of coupons and advertising matter for use of retailers in connection with the sale of their merchandise, and in the redemption of such coupons by the exchange therefor of various articles of silverplated ware and of chinaware, in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The sales of coupons and advertising matter to retailers are solicited and made by agents or solicitors representing said M. A. Willis. Those coupons sold under the name of The Thompson Pottery Co., Advertising Department, are redeemable in chinaware, and those sold under the name of the Rogers Redemption Bureau (formerly under the name of Rogers Advertising Syndicate) are redeemable in silverplated ware. The chinaware used by said M. A. Willis for redeeming coupons sold under the name of The Thompson Pottery Co., Advertising Department, is manufactured by The C. C. Thompson Pottery Co., a corporation having its place of business at East Liverpool, in the State of Ohio. By a written contract or agreement between The C. C. Thomp-

son Pottery Co. and said M. A. Willis, said corporation has agreed to and does sell to said Willis such chinaware as he requires for carrying on his business, and said Willis agreed to purchase and pay for the same; and said corporation further agreed to allow said Willis to carry on the sale of the chinaware purchased from it under the trade name or style of The Thompson Pottery Co., Advertising Department; and said Willis has used and continues to use such name in his business as herein described. The silverplated ware used by said M. A. Willis for the redemption of coupons is purchased by him from wholesalers of such products.

M. A. Willis, in soliciting the sale of and selling his coupons and advertising matter in interstate commerce, agreed to cease and desist from directly or indirectly stating or representing that the merchandize which he distributes to retailers' customers is free, or that it costs such customers nothing; and/or concealing from, or failing to disclose to, such retailers the fact that such merchandise is not distributed free but that a charge therefor is exacted from their customers; the use in contracts or otherwise of ambiguous or misleading clauses respecting the terms and conditions upon which refunds of sums paid by retailers for coupons and advertising will be made; the use of the words "Potteries: E. Liverpool, Ohio, Established 1868", on contracts or other papers, in any way which may import or imply that said M. A. Willis owns or operates potteries at East Liverpool, in Ohio, or elsewhere; or that his business was established in 1868; the use of the words "The Thompson Pottery Co., Advertising Department", or of any abbreviation thereof (such as "Advt. Dept."); or of any other similar words which may import or imply that he is carrying on or conducting an advertising plan for The C. C. Thompson Co., of East Liverpool, Ohio; or that said M. A. Willis is the advertising department of said Thompson Co., or is connected with said company in any way other than as purchaser; stating or representing, directly or by such means as exhibiting a page from Dun & Bradstreet's showing the rating of The C. C. Thompson Pottery Co. of East Liverpool, Ohio, either with or without the statement that that is the company they are representing, or by other similar deceptive means; and exhibiting to retailers merchandise of a quality inferior [superior] to that distributed, as a means of inducing them to subscribe for coupons and advertising matter. (Sept. 10, 1936.)

1821. **False and Misleading Advertising—Cleansing Fluid.**—Novel-Wash Co., a corporation, engaged under its corporate name and under the name of Biancolava Chemical Co., in the preparation, sale, and distribution under the grade names of "Novel-Wash" and "Biancolava", of a cleansing fluid in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Novel-Wash Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from stating or representing in advertisements of advertising matter circulated in interstate commerce that its said product "Novel-Wash" or "Biancolava" is a liquid solution of chlorine; that said product is non-poisonous; that said product will sterilize and disinfect at the same time, or that the same will remove all stains; that said product is a deodorizer; that said product is an antiseptic preparation; that said product will promote health. (Sept. 10, 1936.)

1822. **False and Misleading Brands or Labels and Prices—Spices and Flavoring Extracts.**—Michael L. Temkin, an individual trading as Temson Spice Co. and as Temson Products Co., engaged for a number of years in the business of packaging spices and bottling flavoring extracts, selling same in interstate commerce, in competition with other firms, individuals, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Michael L. Temkin, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on labels affixed to the containers of said products of any false, fictitious, or misleading statements or representations concerning the price or value of said products, and from selling and supplying customers with said products which are branded, labeled, or otherwise marked with a purported selling price known to be in excess of the price at which said products are intended to be and are sold in the usual course of trade. (Sept. 10, 1936.)

1823. **False and Misleading Brands or Labels and Misrepresenting Product—Perfumes, Etc.**—Samuel Klein, an individual trading under the name and style of Pierre Villon, engaged as a registered pharmacist in the preparation of perfumes, toilet waters, sachets, and other similar products, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Samuel Klein, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on labels attached to products not made in or imported from any foreign country of legends such as "Pierre Villon, Roma—Italy"; "Pierre Villon, Paris—New York"; or "Noel en Paris, Villon"; either independently or in connection or conjunction with other factors contributing to confusion or deception, such as the use of a chianti container stamped with the words "Made in Italy"; of pictorial representations of characteristically Italian scenes; foreign coats of arms; ribbons in the Italian national colors; the name of a fictitious Parisian firm, such

as "Cha: Stenet Fresnes, Paris"; and which may import or imply that the product in connection with which the same appear are made in or imported from a foreign country, or that said Samuel Klein has an office, laboratory, or place of business in such foreign city or country, when such is not the fact; the use of containers imported from Italy and so marked, in which to sell and distribute domestic products, unless such containers are plainly and conspicuously marked with words informing the purchaser that the contents are not imported but are domestic products; stating and representing that he is the importer of his "Siberian Pine Bath"; and stating and representing that European Health Authorities have suggested his "Siberian Pine Bath" as the natural "Pick-me-up." (Sept. 11, 1936.)

1824. False and Misleading Brands or Labels and Advertising—Powdered Ink.—New York Eagle Ink Co., Inc., engaged in the sale and distribution, in interstate commerce, of powdered ink, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

New York Eagle Ink Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on letterheads, billheads, or other forms of advertisements or advertising matter, of the words and figures "Established 1902"; on labels or other advertising matter of the words "Manufactured and Distributed by the Eagle Ink Co.", or any other similar statement or representation importing or implying that said corporation was prior to March 1936 the manufacturer of the product which it sold and distributed. (Sept. 11, 1936.)

1825. False and Misleading Brands or Labels and Advertising—Blankets, Etc.—Joseph E. Bush and Lester C. Bush, copartners trading under the name and style of The Bush Woolen Mills Co., engaged in the manufacture of blankets, steamer rugs, and automobile robes, and in the sale and distribution of said products in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joseph E. Bush and Lester C. Bush, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "All Wool" 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 import or imply that the products referred to are composed wholly of wool, when such is not the fact. In the event that the product is composed in substantial part of wool, and the word "Wool" is used

as descriptive thereof, then in such case the word "Wool" shall be accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "Wool" is printed, and which will clearly indicate that such product is not composed wholly of wool but is composed in part of a material or materials other than wool. (Sept. 17, 1936.)

1826. **Lottery Scheme—Candy.**—Augustine and Kyer, Inc., a corporation, engaged in the sale and distribution at wholesale of a general line of groceries, including candy, in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Augustine and Kyer, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of any scheme, plan, or method of sale or of promoting the sale of its candy products which involves or places in the hands of dealers for use by them any gift enterprise, lottery, or any scheme of chance whereby any article is secured or the value of any article is determined by lot or chance. (Sept. 21, 1936.)

1827. **False and Misleading Advertising—Motor Vehicles.**—The Studebaker Corporation, engaged in manufacturing motor vehicles and in the sale and distribution of same through its owned and/or controlled subsidiary, The Studebaker Sales Corporation of America, in interstate commerce and in Canada and other foreign countries, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Studebaker Corporation and The Studebaker Sales Corporation of America, in offering for sale and selling motor vehicles in interstate commerce, and in foreign commerce, agreed to cease and desist from the use in their or its advertising matter, or in advertising matter furnished by them or by either of them to authorized dealers, of statements or representations pursuant to or as part of any plan or method of or for financing the purchase of said motor vehicles, the effect or tendency of which is to import or imply, or which statements or representations may or do lead purchasers or prospective purchasers into the belief that, the said plan or method contemplates a designated simple-interest rate on deferred and unpaid balances of the purchase price, as, for instance, six percent, when in fact the interest rate involved in and actually required to be paid by said plan or method is not such simple rate of interest and/or is other than a simple-interest rate of the amount referred to in such advertising. (Sept. 18, 1936.)

1828. **False and Misleading Trade Name and Advertising—Poultry Preparation.**—Fred B. Havens, an individual trading as Puritan Poultry Products, engaged in the sale and distribution of an alleged proprietary medical product under the trade name or designation "Puritan Egg Producer" in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Fred B. Havens, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use of the words "egg producer," either alone or in connection or conjunction with any other word or words, as a trade designation or name for his product, when in fact said product does not contain any ingredient or ingredients that serve as an aid in the egg production of poultry; and from the use in his advertising or printed matter of whatever character of the said words "egg producer" and of any and all statements or representations the effect of which is to import or imply that the feeding or administration of said product to poultry will increase the egg production thereof so as to close the gap between only meager returns and big profits from such poultry, or will double or triple the net profit in eggs, or will make hens highly profitable producers (of eggs) on to, and even beyond the fourth year, when such are not the facts. The said Fred B. Havens also agreed to cease and desist from the use in his said advertising of the words "special offer," either independently or in connection or conjunction with the words "I make it but once," or with any other word or words, or in any way, so as to import or imply that the product designated or referred to by such words constitutes the subject matter of a special offer which is to continue only for a limited time, when such is not the fact. The said Fred B. Havens further agreed to cease and desist from the use of the statement, "I am offering to send you Five Dollars worth * * * for only \$1.95. * * * This is to you my special distribution offer," or of any other statement of similar meaning, so as to import or imply that the regular price at which said product is sold in the ordinary course of trade is \$5.00 and that the offer of said product for \$1.95 is a "special" offer, when such are not the facts. (Sept. 23, 1936.)

1829. **False and Misleading Trade Name and Advertising—Baby Chicks.**—Albert Sieb and Frank E. Dumser, copartners, trading under the firm name and style of Sieb's Hatchery, engaged in the business of hatching various types and breeds of baby chicks and in the sale and distribution thereof in interstate commerce in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Albert Sieb and Frank E. Dumser, in soliciting the sale of and selling their baby chicks in interstate commerce, agreed to cease and desist from the use as a trade name for their baby chicks of the words "Sieb's Oversize Chicks", unless and until their chicks are definitely larger and heavier than those of competitors; the use of statements and representations importing or implying that increases in the number of their customers are due to the fact that the baby chicks which they sell and distribute are larger and heavier than those of competitors, when such is not the fact. (Sept. 23, 1936.)

1830. False and Misleading Brands or Labels and Advertising—Dog Remedies.—Benjamin S. Bonebrake and William T. Hollifield, co-partners, trading under the name and style of S. A. Crisp Canine Co., engaged in the sale and distribution in interstate commerce of remedies for dogs, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Benjamin S. Bonebrake and William T. Hollifield, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter, or on labels or cartons distributed in interstate commerce that their product, "Crisp's Hot Shot Nerve Sedative" is a remedy for running fits in dogs; that their product, "Crisp's Expecto- rant", is a remedy for distemper in dogs; from the use of exaggerated and excessive claims and statements regarding the curative properties of their "Tun Kone" for the treatment of Black Tongue, and of "Crisp's Sarcoptic Mange Remedy" for the treatment of sarcoptic and other forms of mange in dogs. (Sept. 25, 1936.)

1831. False and Misleading Trade or Corporate Name and Advertising—Fur Garments.—Alaska Fur Trappers, Inc., a corporation, engaged in the business of selling fur garments, principally coats and neck pieces, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Alaska Fur Trappers, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the word "Trappers" as a part of or in connection or conjunction with its corporate or trade name, when in fact the said corporation is not engaged in business as a trapper or producer of furs; and from the use of the word "Trappers" either independently or in connection with the words "Alaska Fur" or of either of said words or in any way so as to import or imply that the said corporation is engaged in business as a producer of furs or in the trapping of Alaskan or other animals for

their furs, when such is not the fact. The said Alaska Fur Trappers, Inc., also agreed to cease and desist from the use on its advertising cards or otherwise of the words "manufacturing" either independently or in connection with any other word or words so as to import or imply that the said corporation makes or manufactures the products which it sells or that it actually owns and operates or directly and absolutely controls a plant or factory wherein its products are made or manufactured. The said Alaska Fur Trappers, Inc., further agreed to cease and desist from the use on its said printed matter of the word "wholesale" so as to import or imply that it is engaged in business, wholly or in part, as a wholesaler, when such is not the fact. (Sept. 30, 1936.)

1832. False and Misleading Brands or Labels—Men's Work Shirts and Jackets.—Reliance Manufacturing Co., a corporation, engaged in the business of manufacturing men's work shirts, jackets, and other items of merchandise, which it sells in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Reliance Manufacturing Co., in offering for sale and selling its jackets in interstate commerce, agreed to cease and desist from the use of the phrases "All Wool Melton" and "Genuine Wool Melton" or of either of said phrases as a brand or label for said jackets which are not in fact composed wholly of wool; and from the use of the word "Wool" either independently or in connection or conjunction with the words "All" or "Genuine" and "Melton" or with any other word or words so as to import or imply that said jackets are composed wholly of wool, when such is not the fact; provided that if the jackets are composed in substantial part of wool and the word "Wool" is used as descriptive thereof, then in that case the word "Wool" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Wool" is printed so as to indicate clearly that said jackets are not composed wholly of wool or that will indicate clearly that said jackets are composed in part of a material or materials other than wool. (Sept. 30, 1936.)

1833. False and Misleading Trade or Corporate Name and Advertising—Fluid Flavoring Compounds.—Raymond Falduti, an individual, engaged under the trade name of Minerva Chemical Laboratories, in the sale and distribution in interstate commerce of fluid flavoring compounds, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Raymond Falduti, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on letterheads, billheads, and in other advertisements and advertising matter circulated in commerce, of the word "Importers" unless and until the products which he sells and distributes are imported by him; of the word "Laboratorio", or of its English equivalent "Laboratory", as a part of or in connection with any trade name under which to carry on his said business; or as importing or implying that he owns, controls, or operates any laboratory or laboratories, when such is not the fact; of the words "Estratti Importati", or of their English equivalent "Imported Extract", either alone or in connection with the words "Milan, Italy", to describe or designate products which are not made in Milan or in Italy, but are domestic products of the United States. (Sept. 30, 1936.)

1834. **False and Misleading Brands or Labels—Leather Luggage.**—Atlas Leather Case and Bag Manufacturing Co., a corporation, engaged in the manufacture of leather luggage, and in the sale and distribution thereof, in interstate commerce under its own name and also under the name and style of Atlas Leather Case Co., in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

As a rule, all cattle hides intended for leathers other than sole, belting, and harness and some specialties, are split or "skived". The outer or top "cut" or layer of a split cattle hide may be and generally is, distinguished as a "grain"; but any piece of leather ordinarily made from split hide and not described as a split is accepted and understood by the trade and the purchasing public to be the top or "grain cut."

Atlas Leather Case and Bag Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Genuine Cowhide" or of the word "Cowhide", either independently or in connection or conjunction with the word "Genuine" or with any other word or words as a brand or label for its products, so as to import or imply that said products are composed of leather made from the top or grain cut or layer of cowhide; or unless, when such products are composed of leather made from the inner or flesh cut of the hide and the word "Cowhide" is used as descriptive thereof, then in that case the word "Cowhide" shall be immediately accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "Cowhide" is printed, and which will clearly indicate that said products are not

composed of leather made from the top or grain cut or layer of such skin. (Sept. 30, 1936.)

1835. **False and Misleading Advertising—Household Remedy.**—Helen C. McCarthy, an individual trading under the name and style of Mulhall Remedy Co., engaged in the sale and distribution of a household remedy, under the trade name and style of "Mulhall's Remedy", in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Helen C. McCarthy, in soliciting the sale of and selling said product in interstate commerce, agreed to cease and desist from stating or representing in advertisements or advertising matter distributed in interstate commerce, that said product is a nerve tissue builder, or an effective treatment or remedy for nervous disorders of the human body. (Oct. 5, 1936.)

1836. **False and Misleading Prices and Advertising—Courses of Instruction and Textbooks.**—R. T. Miller, Jr., an individual trading under the name and style of American Technical Society, engaged in the business of giving courses of instruction in business administration, in the publishing of books for home study in said subject, and in the sale and distribution of such books in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

R. T. Miller, Jr., in soliciting the sale of and selling his courses of instruction and textbooks in interstate commerce, agreed to cease and desist from stating or representing, directly or through his solicitors or agents, that his courses of instruction in business administration cannot be purchased elsewhere for less than \$158.00; and from holding out or representing, as an inducement for the purchase of such textbooks that the same are being offered at a greatly reduced price, when such is not the fact; stating or representing to high school graduates that they have been selected as "Reference Students"; and from any statement or representation importing or implying that such "Reference Students" receive special concessions or treatment, when such is not the fact. (Oct. 5, 1936.)

1837. **False and Misleading Trade or Corporate Name and Advertising—Watch Repair Business.**—Daniel Goodman, an individual trading as Goodman's Watch Repair Factory and as Goodman's Watch Factory Service, engaged in the business of repairing watches for jewelers, watch dealers and others located in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to

cease and desist from the alleged unfair methods of competition as set forth therein.

Daniel Goodman, in carrying on his watch repair business in interstate commerce, agreed to cease and desist from the use of the word "Factory" as part of or in connection with his trade name or names, or in any way, when in fact said Daniel Goodman does not make or manufacture the parts used by him in the repair of watches. The said Daniel Goodman also agreed to cease and desist from the use of the word "Factory" or the word "Manufacturers" in his advertising or in any way so as to import or imply that the said Daniel Goodman actually owns and operates or directly and absolutely controls a plant or factory wherein are made or manufactured the parts used by him in the repair of watches. The said Daniel Goodman further agreed to cease and desist from the use in his advertising or otherwise of the word "Importers" with the effect of causing customers or prospective customers to believe that the said Daniel Goodman obtains his watch repair parts in a foreign country or countries and causes them to be delivered to him in this country. The said Daniel Goodman also agreed to cease and desist from the use of the statement "The largest watch repair factory in the United States" or of any other similar statement or representation as descriptive of his business when in fact such business is not properly and accurately so represented. (Oct. 8, 1936.)

1838. False and Misleading Brands or Labels and Advertising—Shoes.—Commonwealth Shoe and Leather Co., a corporation, engaged in the business of manufacturing shoes and in the sale and distribution thereof in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Commonwealth Shoe and Leather Co., in soliciting the sale of and selling its shoes in interstate commerce, agreed to cease and desist from the use of the words "Hand Sewed" or "Hand Sewn" as descriptive of its said products which are not wholly hand-stitched or sewn by hand; and from the use of the said words, either alone or in connection or conjunction with any other word or words or pictorial or other representation, as a stamp, brand, label, or otherwise, to advertise its shoes so as to import or imply that the entire sole and welt of the shoe are attached by means of hand-stitching, when such is not the fact. (Oct. 8, 1936.)

1839. False and Misleading Advertising—Nickel Plating Formulae and Apparatus.—George D. Jenison, an individual trading under the name and style of "Gun Metal Finish Company", engaged in the sale and distribution of formulae for nickel-plating metals and silvering mirrors, and of apparatus for use in such nickel-plating, in interstate

commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

George D. Jenison, in soliciting the sale of and selling his apparatus and formulae in interstate commerce, agreed to cease and desist from the use of false or misleading statements or representations respecting the value of his formula or the possibilities of earnings by their use; the use of exaggerated and inaccurate statements or representations respecting the uses to which said apparatus can be put or the range of work that can be accomplished by its use. (Oct. 10, 1936.)

1840. False and Misleading Brands or Labels and Advertising—Furs.—Sigmunds, Inc., a corporation, engaged in conducting a retail department store and in the sale of a variety of merchandise, including furs, in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Sigmunds, Inc., in soliciting the sale of and selling its products in commerce and/or in interstate commerce, agreed to cease and desist from describing furs in any other way than by the correct name of the fur as the last word of the description; and when any dye or blend is used simulating another fur, the true name of the fur appearing as the last word of the description shall be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur, as thus: "Beaver-dyed coney; Mink-dyed Marmot; Seal-dyed coney." (Oct. 10, 1936.)

1841. False and Misleading Brands or Labels—Neckwear.—Arthur Siegman, Inc., a corporation, engaged in manufacturing men's neckwear, which it sells and distributes in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Arthur Siegman, Inc., in soliciting the sale of and selling its neckwear in interstate commerce, agreed to cease and desist from the use of the words "Silk Craft Cravats" as descriptive of said products which are not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "Silk" either alone or in connection or conjunction with the words "Craft Cravats" or with any other word or words or in any way on tags or labels affixed to its products so as to import or imply that said products are composed of silk, when such is not the fact; unless when said products are composed in substantial part of silk and the word "Silk" is used as descriptive thereof, then in that case the word "Silk" is printed so as to indicate clearly

that said products are not composed wholly of silk and that also will indicate clearly that said products are composed in part of a material or materials other than silk. (Oct. 12, 1936.)

1842. **False and Misleading Trade Name—Pianos.**—Gulbransen Co., a corporation, engaged in the manufacture of pianos and in the sale and distribution of the same in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The term "Grand Piano" means to the trade and the general public a piano having strings placed horizontally, gravity action, and certain tonal and other qualities not found in other types of pianos.

Gulbransen Co., in soliciting the sale of and selling its pianos in interstate commerce, agreed to cease and desist from the use of the word "Grand", either independently or in connection or conjunction with any comparisons of its pianos sold and distributed under the trade name of "Vertical Grand" with other pianos, as a trade name or part thereof, by which to designate or describe any piano not having its strings placed horizontally, with gravity action, and not possessing those tonal and other qualities associated by the trade and the general public with grand pianos. (Oct. 12, 1936.)

1843. **False and Misleading Trade or Corporate Name and Advertising—Toothpaste.**—Dr. Johann Strasska Laboratories, Inc., Ltd., a corporation, engaged in the sale and distribution of toothpaste in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Dr. Johann Strasska Laboratories, Inc., Ltd., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Laboratories" as a part of its corporate or trade name, or in any other way, in its advertising of whatever character, so as to import or imply that it owns and operates or controls laboratories or a place or places devoted to experimental study in a branch or branches of natural science or the application of scientific principles in the preparation of drugs, chemicals, or foods. Said corporation also agreed to cease and desist from the use of the words "manufactured by", or of any other word or words of similar meaning, in connection with "Dr. Johann Strasska Laboratories", so as to import or imply that it makes or manufactures its product in laboratories owned by it or that it actually owns and operates or directly and absolutely controls laboratories, a plant, or a factory in which said product is made or manufactured, when such is not the fact. Said corporation further agreed to cease and desist from the use of the words "a certified product", or of any other words of similar meaning,

relating to its product, so as to import or imply that such product has been certified by a governmental agency or by a dental, medical, or other association qualified to pass upon the quality of the product, when such is not the fact. Said corporation also agreed to cease and desist from the use of the word "ivory" as descriptive of its gift charms, when in fact such charms are not made of ivory. (Oct. 12, 1936.)

1844. **False and Misleading Brands or Labels—Furs.**—H. Zirkin and Sons, Inc., a corporation, engaged in business as a furrier, selling and distributing its products in interstate commerce and in the District of Columbia, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

H. Zirkin and Sons, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from describing furs in any other way than by the use of the correct name of the fur as the last word of the description; and when any dye or blend is used in simulating another fur, the true name of the fur appearing as the last word of the description shall be immediately preceded by the word "dyed" or "blended", compounded with the name of the simulated fur, as thus: Northern Seal-Dyed Coney, Beaver-Dyed Coney, Lapin-Dyed Coney; using the word "Hudson", either independently or in connection or conjunction with any other word or words, to describe or designate dyed coney or rabbit fur. (Oct. 13, 1936.)

1845. **False and Misleading Brands or Labels—Luggage.**—State Luggage Co., Inc., a corporation, engaged in the business of manufacturing luggage and in the sale and distribution thereof in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

As a rule, all hides intended for leathers, other than sole, belting, or harness, and some specialties, are split or skived. The outer or top cut or layer of a split hide may be, and generally is, distinguished as a grain, but any piece of leather ordinarily made from a split hide and not described as a split is accepted and understood by the trade and by the purchasing public to be the top or grain cut.

State Luggage Co., Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Genuine Leather" or "Genuine Walrus" as a brand or label for, or otherwise to describe, said products which are not composed of leather made from the top or grain cut or layer of the cow, walrus, or other designated hide; provided that, if said products are composed of leather made from the inner or flesh cut of the designated hide

and the word "leather", "walrus", or other word indicating a kind of hide is used as descriptive thereof, then in that case, the said word indicating a kind of hide shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word indicating a kind of hide is printed, so as to disclose clearly that said products are not composed of leather made from the top or grain cut or layer of the designated hide. (Oct. 13, 1936.)

1846. False and Misleading Advertising—Snap Valves and Couplers.—William A. Buckner and Harry E. Gleason, copartners trading under the name and style of Buckner Manufacturing Co., engaged in the manufacture of snap valves and couplers and in the sale and distribution of the same in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William A. Buckner and Harry E. Gleason, in soliciting the sale of and selling their said products in interstate commerce, agreed to cease and desist from stating or representing, in advertisements or advertising matter circulated in interstate commerce, that the Buckner snap valve is the original snap valve, or the first quick-coupling valve, or the only snap valve on the market; or any other similar statements or representations which falsely represent their said quick-acting valve in any material way. (Oct. 15, 1936.)

1847. False and Misleading Advertising—Baby Chicks.—E. H. Snow, an individual trading under the names and style of "E. H. Snow", "Snow's Hatcheries", and "Snow's Incubator Company", engaged in hatching various breeds and types of baby chicks and in the sale and distribution thereof, in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

E. H. Snow, in soliciting the sale of and selling his baby chicks in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter that his blood-testing will make chicks grow faster, start laying earlier, or become better egg producers than those which have not been blood-tested, in the absence of the observance of other measures recommended in the regulations of the Bureau of Animal Industry of the United States Department of Agriculture or of the Live Stock Sanitary Board of the State of Minnesota; that his blood-testing is a protection, without anything further, against pullorum in chicks, without the observance of the sanitary and hygienic measures recommended by the United States Department of Agriculture and the Live Stock Sanitary Board of the State of Minnesota; from the use in such advertisements or advertising matter of statements or representations

which import or imply that the employees who make his blood tests are qualified veterinarians or are licensed by the Live Stock Sanitary Board of the State of Minnesota, and/or that his so-called "Snow's Hatcheries Improvement Association" has any official connection with said Board, when such is not the fact. (Oct. 23, 1936.)

1848. **False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Knitted Garments.**—Morris Meyrowitch, an individual, trading as Em Em Knitting Mills, engaged as a jobber in the sale and distribution of knitted garments, such as sweaters, bathing suits, jackets, and suits, in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Morris Meyrowitch, in offering for sale or selling his products in interstate commerce, agreed to cease and desist from the use of the words "Knitting Mills" as part of or in connection or conjunction with his trade name; and from the use of the words "Knitting Mills" or of either of said words in any way on his printed matter or boxes shipped or distributed in interstate commerce, so as to import or imply that the said Morris Meyrowitch makes or manufactures the products sold by him in interstate commerce or that he actually owns and operates or directly and absolutely controls a mill or factory in which said products are knitted, made or manufactured, when such is not the fact. (Oct. 23, 1936.)

1849. **False and Misleading Advertising—Machines for Hair Dressers.**—E. Frederics, Inc., a corporation, engaged in the manufacture of machines for use by hair-dressers in waving women's hair, and in the sale and distribution thereof, under the trade name of Frederics' "One Minute Wireless Wave" machine; in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

E. Frederics, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter circulated in interstate commerce, directly or indirectly, of statements or representations—that Frederics' "One Minute Wireless Wave" machine will produce a complete permanent wave in one minute; that no heat is used in giving permanent waves by said machine; that the permanent wave given by said machines is as lasting as naturally curly hair; or any other similar exaggerated, incorrect, or unwarranted statement or representation in reference to said product. (Oct. 23, 1936.)

1850. **False and Misleading Advertising and Disparaging—Threads for Repairing Shoes.**—The Linen Thread Co., Inc., a corporation, engaged in the manufacture of a variety of twines, nets, fishermen's accessories, and especially of threads for sewing and repairing shoes, and in the sale and distribution of the same in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Linen Thread Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter circulated or distributed in interstate commerce of any and all statements and representations, either independently or accompanied by pictorial illustrations, importing or implying that shoes having cemented-on soles cripple the wearers' feet, cause them to limp, "burn" the feet, produce "hot feet", or produce pain or suffering to the wearers; that shoes having cemented-on soles are poor fitting, cheaply constructed, or "leaden soled", or that they are viewed with aversion by the public; that in wearing shoes having cemented-on soles, the wearers' feet come, or are likely to come, in contact with glue or cement; that the use of cement for putting on the soles of shoes is confined to cheap or poorly constructed shoes; that shoe soles held in place by cement are insecure; that shoes having cemented-on soles are not properly ventilated; from the use of any other inaccurate and misleading representations importing or implying that shoes made with cemented-on soles are inferior or undesirable. (Oct. 26, 1936.)

1851. **False and Misleading Trade Name—Pianos.**—Mathushek Piano Manufacturing Co., a corporation, engaged in the manufacture of pianos and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The term "Grand Piano" means to the trade and the general public a piano having strings placed horizontally, gravity action, and certain tonal and other qualities not found in other types of pianos.

Mathushek Piano Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Grand" as a trade name, or part thereof, by which to designate or describe any piano not having its strings placed horizontally, with gravity action, and not possessing those tonal and other qualities associated by the trade and the purchasing public with grand pianos. (Oct. 27, 1936.)

1852. **False and Misleading Brands or Labels and Advertising—Women's Cloth Coats.**—Form Maid Coat Co., Inc., a corporation, engaged in the business of manufacturing women's cloth coats from fabrics and materials purchased by it from various textile companies, selling and distributing the same in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Form Maid Coat Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the coined word "Kam-L-Kloth" as descriptive of a product which is not composed of camel's hair, and from the use, in conjunction with the words "wool and", of the said coined word "Kam-L-Kloth", or of any other simulation of the word "camel", either alone or in connection with the pictorial representation of a camel, so as to import and imply that said product is composed of both wool and camel's hair and that each of said materials, wool and camel's hair, is contained in the product in substantial quantity, when such is not the fact. If the product is composed in substantial part of both wool and camel's hair, and the said words are used to designate such content, then, in that case, the word "wool" and the word "Kam-L-Kloth" shall be displayed in type equally conspicuous and/or in such manner as not to improperly indicate that the content of one of said materials is substantially greater than the content of the other of said materials. (Oct. 27, 1936.)

1853. **False and Misleading Advertising—Jewelry.**—Shaw's Jewelry Co., a corporation, engaged in the sale of jewelry, through its said stores and through travelling salesmen or solicitors, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Shaw's Jewelry Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter circulated in interstate commerce of the words "Yellow Gold" as a description or designation for watch cases not made of gold; or, in the event that the watch cases are gold filled or gold plated and the words "Yellow Gold" are used to describe the same, then in that event the words "Yellow Gold" shall be accompanied by some other word or words, printed in type equally as conspicuous as the type in which the words "Yellow Gold" are printed, and which will clearly and accurately reveal the fact that such cases are not made wholly of gold; of the word "Certified" to designate or describe diamonds which are not certified by any governmental agency,

scientific bureau, or other responsible agency charged with the duty of examining and certifying to the perfection thereof. (Oct. 28, 1936.)

1854. **False and Misleading Brands or Labels—Blankets.**—American Woolen Co., Inc., a corporation, engaged in the manufacture of certain blankets and in the sale and distribution thereof in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

American Woolen Co., Inc., in offering for sale and selling its blankets in interstate commerce, agreed to cease and desist from the use of the words "All Wool" as a brand or label for its said products which are not composed wholly of wool, and from the use of the words "All Wool" as a brand or label for its said products which are not composed wholly of wool, and from the use of the word "Wool", either alone or in connection or conjunction with any other word or words, or in any way, as descriptive of its products, so as to import or imply that said products are composed wholly of wool; provided that, if said products are composed in substantial part of wool and the word "Wool" is used as descriptive of such wool content, then, in that case, the word "Wool" shall be prominently accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "Wool" is printed, so as to indicate clearly that said products are not composed wholly of wool and also to indicate clearly that said products are composed in part of a material or materials other than wool. (Oct. 28, 1936.)

1855. **False and Misleading Advertising—Beautifying Cream.**—A. Sartorisu & Co., Inc., a corporation, engaged in manufacturing hand and manicure aids, principally nail polishes, and in the sale and distribution of same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

A. Sartorius & Co., Inc., in soliciting the sale of and selling its product designated "Plat-Num Manicure Beautifying Cream" in interstate commerce, agreed to cease and desist from the use in its advertising or printed matter, or otherwise, of statements or representations which directly assert, or clearly import or imply that said product, if and when applied to the nails and cuticle as directed, will "nourish" or feed the nails, or will keep the nails healthy or prevent splitting or breaking of the nails, when such are not the facts. (Oct. 28, 1936.)

1856. **False and Misleading Advertising and Disparaging—Dental Preparations.**—Baker and Co., Inc., a corporation, engaged in the manufacture of dental alloys and dental silicates and cements, and

in the sale and distribution thereof, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Baker and Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from making, causing to be made, or recommending the making of the so-called "Mercurochrome Test" of its dental silicate or of the products of its competitors; making any assertion, claim or statement that the said "Mercurochrome Test" in any way demonstrates or determines the comparative liability to leakage of its own and its competitors' silicate fillings; stating or representing in advertisements and advertising matter distributed in interstate commerce, that such purported test simulates mouth conditions, that in such tests and other similar tests, Durenamel shows no leakage; that atmospheric changes do not affect Durenamel; that Durenamel in its liquid form contains no acid; that Durenamel is more translucent than other popular plastic porcelain; that the setting time of Durenamel is under absolute control; that the development of Durenamel is the result of 34 years practical experience of a man who introduced one of the first, if not the first, of the porcelain filling materials; and/or that it is the result of over 30 years of knowledge and practical experience acquired by an internationally known dentist and ceramist; and/or that the individual referred to is an authority on dentist or ceramics, or is internationally known; the use in its advertisements or advertising matter of statements and representations importing or implying that the products of any of its competitors are inferior to its products; or in any other way disparaging its competitors' goods and products; suggesting to and advising dentists to return to the manufacturers any products which show a leakage as a result of the so-called "Mercurochrome Test". (Nov. 2, 1936.)

1857. **False and Misleading Brands or Labels—Luggage.**—Gralnick Brothers, Inc., a corporation, engaged in the business of manufacturing luggage and in the sale and distribution of same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

As a rule, all hides intended for leathers, other than sole, belting, or harness, and some specialties, are split or skived. The outer or top cut or layer of a split hide may be, and generally is, distinguished as a grain, but any piece of leather ordinarily made from a split hide and not described as a split is accepted and understood by the trade and purchasing public to be the top or grain cut.

Gralnick Brothers, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Genuine Pigskin" as descriptive of said products which are not composed of leather made from the top or grain cut or layer of such hide; and from the use as a brand or label for its products of the word "Pigskin", either alone or in connection or conjunction with the word "Genuine", or with any other word or words, so as to import or imply that said products are made from the top or grain cut of such hide, when such is not the fact; provided that, if said products are composed of leather made from the inner or flesh cut of the pigskin and the word "Pigskin" is used as descriptive thereof, then in that case, the word "Pigskin" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Pigskin" is printed, so as to indicate clearly that the said products are not composed of leather made from the top or grain cut or layer of pigskin. Said corporation also agreed to cease and desist from marking, branding, or otherwise representing products as and to be "Walrus" when said products are not composed of leather made from the top or grain cut of such hide and, in fact, are not composed of walrus at all. (Nov. 2, 1936.)

1858. False and Misleading Brands or Labels—Hosiery.—Gibsonville Hosiery Mills Co., a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Gibsonville Hosiery Mills Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the mark, stamp, brand, or labels "Pure Silk Thread Reinforced With Rayon" or "Pure Silk and Rayon", to describe or designate products not composed in their chief or predominating part of silk; and from the use of the words "Pure Silk Thread" and/or "Pure Silk" in any way which may import or imply that the products so described and referred to are composed in their chief or predominating part of silk, when such is not the fact. (Nov. 2, 1936.)

1859. False and Misleading Brands or Labels and Advertising—Olive Oil.—Salvatore A. Laraia, an individual, engaged as a packer and distributor of imported food products, including olive oil; in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Salvatore A. Laraia, in soliciting the sale of and selling his olive oil in interstate commerce, agreed to cease and desist from the use

on the packages in which his said product is packed, sold, and distributed, of statements or representations that the same was awarded first prize, gold medal, grand cross, or diploma of honor at the Firenze Exposition of 1914, either alone or accompanied by any pictorial representations of such medal, cross or diploma. (Nov. 3, 1936.)

1860. **False and Misleading Advertising—Dog and Animal Preparation.**—Peter J. Fisher, an individual trading under the name and style of The Superna Co., engaged in the preparation of a remedy for dogs and other animals, under the trade name or brand of "Nose-O-La", and in the sale and distribution of said product, in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Peter J. Fisher, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating or representing in advertisements or advertising matter circulated in interstate commerce that his said product is a remedy or a competent treatment, for catarrh, colds, coughs, distemper, running or watery nose or eyes, sneezing, of snuffles in dogs or other animals; or that the same is a vermifuge, a general tonic, a tonic of permanent benefit, a conditioner for dogs, cats and fur animals, or a preventive of worms, skin diseases or other forms of ill health; or that the same is a protection against infections and contagious diseases; and/or that the same is good for backward puppies, lack of pep, loss of appetite, poor eaters, run down conditions, and for brood bitches and stud dogs; the publication and distribution in interstate commerce of any of the above described or other similar statements or representations, which do not truthfully represent and describe the said product or the results likely to be obtained from its use. (Nov. 3, 1936.)

1861. **False and Misleading Advertising—Ribbons.**—Hargood Ribbon Co., Inc., a corporation, engaged in the business of selling and distributing ribbons in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hargood Ribbon Co., Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter distributed in interstate commerce of the words "Mills", "Manufacturers", and "Manufacturing", or of any of such words, alone or in connection or conjunction with the words "Selling Direct to the Trade", or with any other word or words, or in any way, so as to import or imply that said corporation makes or manufactures its said products or that it actually owns and operates or directly and absolutely controls a mill or factory in which said products are made or manufactured, when such is not the fact. (Nov. 3, 1936.)

1862. **False and Misleading Advertising—Souvenirs.**—Bloom Brothers Co., engaged in the sale of souvenirs, through traveling salesmen who go about soliciting orders, and in the distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Bloom Brothers Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its catalog description of, or on its bracelets of pictorial representations portraying or representing American Indians and/or scenes in the lives of such Indians, such as wigwams, canoes, feathered head-dresses, or typical Indian decorative work, unless such pictorial representations have thereon appropriate language, clearly indicating that the article so described is not made by American Indians but is manufactured by others than such Indians; from the use of the word "Indian", or the words "Indian Bracelet" in its advertisements or advertising matter, to designate said product and from the use of the word "Indian" in any way so as to import or imply that the said bracelets are made by Indians, when such is not the fact. (Nov. 5, 1936.)

1863. **False and Misleading Brands or Labels—Cigars.**—Lancaster Cigars, Inc., a corporation, engaged in manufacturing cigars and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The island of Cuba has long enjoyed a reputation for the superior quality of the tobacco grown therein, and cigars made of tobacco grown in the island of Cuba are preferred by some smokers and regarded by them as superior to cigars manufactured from domestic or other tobaccos.

Lancaster Cigars, Inc., in soliciting the sale of and selling its cigars in interstate commerce, agreed to cease and desist from the use on the labels affixed to the containers of said products of the word "Havana" as descriptive of cigars not composed of or manufactured from Havana tobacco, a tobacco grown in the island of Cuba; and from the use of the word "Havana" in any way so as to import or imply that said cigars are made or manufactured wholly from Havana tobacco. The said Lancaster Cigars, Inc., also agreed to cease and desist from the use of the words "Havana Blend" on its said labels, or in any other way, so as to import or imply that its cigars so represented are composed in substantial part of Havana tobacco, when such is not the fact. (Nov. 4, 1936.)

1864. **False and Misleading Advertising—Pottery.**—The Har-ker Pottery Co., a corporation, engaged in the manufacture of

pottery and in the sale and distribution thereof, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Among well informed members of the trade and the purchasing public, the word "China" or "Chinaware" means an earthen vessel which is non-porous, vitreous and translucent; and there is a substantial number of the latter who prefer to purchase vitreous and translucent ware and are deceived when they are sold earthenware under the name of "China" or "Chinaware" which does not possess the properties of being non-porous, vitreous, and translucent.

The Harker Pottery Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "China" and "Chinaware", or either of them, to describe, designate, or represent products which are not non-porous, vitreous, or translucent. (Nov. 9, 1936.)

1865. Lottery Scheme and False and Misleading Advertising—Wrist Watches, Silverware, Etc.—Abe Puzes, an individual trading under the name and style of "American Distributors", engaged in the sale and distribution of wrist watches, silverware, lamps, rotary clocks, etc. by the sales card method, in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the following unfair methods of competition as set forth therein.

Abe Puzes, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in interstate commerce of any plan, scheme, or method of sale, or of promoting the sale of his 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 for the purchase of any other article; stating and representing in circulars or other advertisements or advertising matter, that the articles distributed to dealers in consideration of their services in selling his products are given free, when such is not the fact. (Nov. 10, 1936.)

1866. False and Misleading Brands or Labels—Shoes.—Champion Shoe Manufacturing Corp., a corporation, engaged in the business of manufacturing shoes and in the sale and distribution thereof in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Champion Shoe Manufacturing Corp., in soliciting the sale of and selling its shoes in interstate commerce, agreed to cease and desist from the use on its labels affixed to said shoes of the words "Made by Dr.

Zacharoff" or "Approved by Dr. Zacharoff" or the word "health" either alone or in connection or conjunction with the words "Foot forms" or "foot" or with any other words or words as descriptive of said shoes so as to import or imply that said shoes are made or approved by a doctor or are made in accordance with the design and/or under the supervision of a doctor and contains special, scientific, health, or orthopedic features which are the result of medical advice or services, when such is not the fact. (Nov. 12, 1936.)

1867. **False and Misleading Advertising—Shoes.**—Melville Shoe Corp., owns and controls Thom McAn Shoe Co., a New York corporation having a number of stores located within the District of Columbia, through which stores, the said Melville Shoe Corporation sold shoes at retail in commerce as defined by the act, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Melville Shoe Corp., acting for itself and in behalf of its subsidiary, Thom McAn Shoe Co., agreed, in advertising, offering for sale and selling its shoes in commerce as defined by the act, to cease and desist from the use of the words "Approved by Doctors" or of any other word or words of similar meaning, so as to import or imply that the shoes to which said words refer have been approved by doctors or physicians skilled in the science of orthopedics and recognized as organized authority to pass upon and approve said shoes. The said corporation also agreed to cease and desist from the use of the words "Scientifically Designed" in connection or conjunction with the words "Approved by Doctors" or with any other word or words so as to import or imply that said shoes were scientifically designed by a doctor or physician skilled in the science of orthopedics; and from the use of the word "health" in any way so as to import or imply that the shoes to which the said word refers were perfected, designed, made or manufactured in accordance with the science of medicine or orthopedics. (Nov. 12, 1936.)

1868. **False and Misleading Brands or Labels and Advertising—Wood Veneers.**—R. S. Bacon Veneer Co., a corporation, engaged in the business of manufacturing wood veneers and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

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.

R. S. Bacon Veneer Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the

use in its printed matter of the words "African Walnut" as descriptive of its products, so as to import or imply that said products are made of wood derived from trees of the botanical walnut or "Juglandaceae" family; and from the use of the word "Walnut" either alone or in connection or conjunction with the word "African" or with the word "Tigerwood" or with any other word or words or in any way with the effect, or which may have the effect of causing purchasers to believe that said products are made of wood derived from trees of the Walnut family, when such is not the fact. (Nov. 12, 1936.)

1869. **False and Misleading Brands or Labels and Prices—First Aid Kits.**—Union Pharmacal Co., Inc., a corporation, engaged in the business, among other things, of assembling so-called "Economy First Aid Kits", and in the sale and distribution of said products in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Union Pharmacal Co., Inc., in offering for sale and selling its kits in interstate commerce, agreed to cease and desist from the use, on the cartons in which said kits are packed, of exaggerated or misleading statements or representations concerning the value of said kits or the price at which said kits are sold or intended to be sold in the usual course of trade. (Nov. 13, 1936.)

1870. **False and Misleading Brands or Labels and Advertising—Malt.**—Grain Products Corp., engaged in the sale and distribution of malt in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Grain Products Corp., in offering for sale and selling its malt product in interstate commerce, agreed to cease and desist from the use of the words, "Pilsen Malt" as descriptive of the product, which is not made or manufactured from barley grown in Czechoslovakia; and from the use of the word "Pilsen" as descriptive of its malt product so as to import or imply that said product is made or manufactured from barley grown in Czechoslovakia, when such is not the fact. (Nov. 13, 1936.)

1871. **False and Misleading Trade Names or Brands—Radios.**—Henry I. Scott, an individual trading as Gordon's Radio Shop, engaged as a retailer in the sale and distribution of radio receiving sets in commerce, as defined by the act, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Henry I. Scott, in soliciting the sale of and selling his radio receiving sets in commerce as defined by the act, agreed to cease and desist from the use as a trade name or brand for said products of the word "Majestic", either alone or in connection or conjunction with "International" or with any other word or words, or in any way so as to import or imply that said products are those products made or manufactured by Majestic Radio and Television Corporation of Illinois, successor in business to Grigsby-Grunow Co. referred to above, when such is not the fact; 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 so as to import or imply that said products are those products made or manufactured by R. C. A. Victor Co., Victor Division of the R. C. A. Manufacturing Co., when such is not the fact. (Nov. 16, 1936.)

1872. False and Misleading Trade or Corporate Name and Advertising—Correspondence Courses.—McKinley-Roosevelt University, a corporation, engaged in the business of conducting by correspondence, courses of study in a wide variety of subjects, including arts and sciences, engineering, economics, chemistry, and cognate subjects, selling and distributing its courses of instruction in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

McKinley-Roosevelt University, in soliciting the sale of and selling its courses of instruction in interstate commerce, agreed to cease and desist from the use of the word "University" as part of or in connection or conjunction with its corporate or trade name, containing the word "University" in any way which may import or imply that said corporation is an educational institution or university organized for teaching and study in the higher branches of learning, and in which the education imparted is universal, embracing many branches including the arts, sciences, and all manner of learning and possessing the power to confer degrees which indicate proficiency in the branches taught, or that said corporation conducts an educational institution such as the term "University" is commonly understood and generally accepted by the public to mean; from publishing in connection with its catalogues or other advertisements or advertising matter, letters or combinations of letters such as LL. B., LL. M., Ph. D., etc., following the names of members of its faculty, when in fact the degrees indicated and referred to by such letters are degrees conferred by an institution of higher learning in recognition of study and attainment. (Nov. 17, 1936.)

1873. False and Misleading Trade or Corporate Name and Advertising—Silk Goods.—Barnett Cass, Samuel Cummings, and Isador

Shapiro, copartners trading under the firm name and style "Industrial Silk Mills", engaged in the sale and distribution of silk goods in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Barnett Cass, Samuel Cummings, and Isador Shapiro, in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist from the use of the word "Mills" as part of, or in connection or conjunction with the trade name under which they offer for sale and sell their products in interstate commerce; and from the use of the word "Mills" and of the word "Manufacturers," or of either of said words alone or in connection or conjunction with any other word or words or in any way so as to import or imply that they make or manufacture the products which they sell, or that they actually own and operate or directly and absolutely control the mill or factory in which said products are made or manufactured, when such is not the fact. (Nov. 17, 1936.)

1874. **False and Misleading Brands or Labels and Advertising—Hygiene Preparation.**—C. DeWitt Lukens Surgical Supply Co., a corporation, engaged in the manufacture of a line of specialties for use by surgeons in performing operations, and also (under the name and style of "Duray Chemical Company") of "Willo Wafers", described as "Oxygenated Jelly Wafers for Modern Feminine Hygiene"; and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

C. DeWitt Lukens Surgical Supply Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter, or on labels accompanying said products, of words, phrases, and expressions such as: "Happy married life depends on effective marriage hygiene," "Willow Wafers will give security," "No apparatus," "Effective all night", "Douching is not necessary" or any other similar words, phrases, or expressions which may import or imply that said product is a contraceptive or that it is effective or can be relied upon for that purpose; that said product is an antiseptic, or a safe means of feminine hygiene for self-administration; and/or that the same can safely be used by self-administration. (Nov. 19, 1936.)

1875. **False and Misleading Trade Name or Brand and Advertising—Radios.**—Metropolitan Radio Co., Inc., engaged in the business of selling radio receiving sets and supplies at retail in commerce as defined by the act, in competition with other corporations, individuals,

firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Metropolitan Radio Co., Inc., in offering for sale and selling its radio receiving sets in commerce as defined by the act, agreed to cease and desist from the use as a trade name or brand for said sets of the word "Majestic" either alone or in connection or conjunction with the word "International" or with any other word or words, or in any way so as to import or imply that said sets are sets made or manufactured by Grigsby-Grunow Co., or its successor in business, Majestic Radio and Television Corporation of Chicago, Ill., when such is not the fact; of the words "General Electric" or of any abbreviation or simulation thereof, either alone or in any other way so as to import or imply that said sets so branded are sets made or manufactured by General Electric Co., when such is not the fact; of the word "Sparta" or of any other colorable imitation of the word "Spartan" either alone or in connection or conjunction with the words "Junior Universal" or with any other word or words so as to import or imply that said sets so branded are sets made or manufactured by The Sparks-Withington Co. of Ohio, when such is not the fact. The said Metropolitan Radio Co., Inc., also agreed to cease and desist from the use in its advertising matter or in any other way of the word "metal" as descriptive of the tubes with which its radio receiving sets are equipped or of radio tubes offered for sale and sold by it in commerce so as to import or imply that said tubes are those products which have become popularized and known to the trade and purchasing public as "metal" tubes, that is to say, radio tubes in which the technical elements are sealed in a vacuum in steel—radio tubes wherein metal functions instead of glass, when such is not the fact. (Nov. 19, 1936.)

1876. False and Misleading Trade or Corporate Name and Advertising—Hygiene Preparation.—Percy LeMon Clark, Jr., and Philip A. Lieber, copartners trading under the name and style of "Cervicol Laboratories," engaged in the sale and distribution in interstate commerce, under the trade name of "Cervikit" of a set consisting of a rubber diaphragm, an inserter, and a jar of vaginal antiseptic jelly in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Percy LeMon Clark, Jr., and Philip A. Lieber, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter circulated in interstate commerce of any statements or representations that said products are effective, safe, and can be relied upon to accom-

plish their purpose when used as contraceptives; from the use in connection with or as a part of their trade name under which they carry on their said business of the word "Laboratories", in any way soliciting the sale of their said products, which may import or imply that they own and operate or control a laboratory or laboratories when such is not the fact; from the use in advertisements or advertising matter of any fictitious portrait with or without a fictitious name and/or the letters "M. D.", in any way which may import or imply that the portrait is that of a real individual, or that his name is as stated, or that he is a physician, when such is not the fact. (Nov. 17, 1936.)

1877. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Fur Garments.—Canadian Fur Trappers Corporation, engaged in dealing in fur garments and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Canadian Fur Trappers Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Canadian" and/or "Fur Trappers" either independently or in connection or conjunction with any other word or words, or in any way which may import or imply that said corporation is a Canadian corporation, or that it is engaged in shooting, trapping, or catching fur-bearing animals in Canada or elsewhere, or that it is composed of persons who are so engaged, or that said corporation buys its furs from the trappers thereof; omitting the final word of its corporate title, viz, the word "corporation," or in any other way suggesting or producing the impression in its advertisements or advertising matter that it is an association of trappers of fur-bearing animals, or a direct producer of furs; and from the use in radio broadcasts of such titles as "Fur Trappers Dance Period," or any similar expression importing or implying that it is an association of trappers or direct producers of furs; describing furs in any other way than by the use of the correct name of the fur as the last word of the description; and when any dye or blend is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, as thus: "Seal-dyed Coney," "Medoza Beaver-dyed Muskrat," "Hudson seal-dyed Muskrat." (Nov. 21, 1936.)

1878. False and Misleading Brands or Labels and Prices—Flavoring Products.—Belmont Products Co., a corporation, engaged in manufacturing or compounding flavoring products and in the sale and distribution of same in interstate commerce, in competition with other

corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Belmont Products Co., in offering for sale or selling its products in interstate commerce, agreed to cease and desist from the use on labels affixed to its products or in any way as descriptive of said products of the words "Dollar Value" when in fact such alleged valuation is greatly in excess of the value of said products and much in excess of the price for which said products are offered for sale, sold, expected, and intended to be sold in the usual course of trade; and from the use of the words or phrase "Dollar Value" in connection with a suggested retail price of an amount less than \$1.00 so as to import or imply, or which may cause purchasers to believe that the cost of said product has been reduced and/or that the purchaser is obtaining for the lower price products having a dollar value. The said corporation also agreed to cease and desist from the use on said labels of the word "Vanilla" or "lemon" to represent or designate products which, respectively, are not composed wholly of vanilla or the juice or the fruit of the lemon. If the products are imitations of the flavor of vanilla or lemon and the word "Vanilla" or "Lemon" is used to designate such imitation flavor, then in which case the word "Vanilla" or "Lemon" shall be immediately accompanied by the word "Imitation" or other word or words of like import, printed in type equally as conspicuous as that in which the word "Vanilla" or "Lemon" is printed, so as to indicate clearly that the product is not composed of vanilla or lemon but is composed of a product simulating or imitating respectively the flavor of vanilla or lemon. The said corporation further agreed to cease and desist from the use on said labels of the words "Double Strength" or "Extra Strength" to designate or describe products which are not of double or extra strength. (Nov. 23, 1936.)

1879. False and Misleading Brands or Labels—Hosiery.—Belmont Hosiery Mills, Inc., a corporation engaged in the manufacture of hosiery and in the sale and distribution of the same, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Belmont Hosiery Mills, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from marking, branding, or labeling its products or any thereof, with any statement or representation that the same contain two threads of silk for each thread of rayon, or any other exaggerated or misleading statement in reference to the silk content of such products comparatively with their content of other materials. (Nov. 25, 1936.)

1880. **False and Misleading Advertising—Furniture, Etc.**—Montgomery Ward and Co., a corporation engaged as a large mail order house in the sale and distribution of a variety of articles of merchandise in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Montgomery Ward and Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of words and expressions such as "Rich Orientalwood and butt Walnut veneers", "Veneered with butt walnut", "Orientalwood veneered," "Rich butt walnut veneers," "Veneered in striped or matched butt walnut," "Walnut veneered," "Veneered in Orientalwood and butt walnut", "All butt walnut veneers," or any other words or phrases of like meaning and import to describe or designate products not wholly covered with veneer; *provided, however*, that if such products are not wholly covered with veneer and the above words or phrases, or any of them are used to describe or designate such products, the other woods of which the exposed surfaces of such products are composed shall be set out, designated and described in such advertisements and advertising matter; the use in advertisements or advertising matter of the words "Verified Value" to designate or describe products the value of which has not been ascertained or verified by an impartial or disinterested organization. (Nov. 30, 1936.)

1881. **False and Misleading Brands or Labels and Advertising—Chemical Products.**—Purex Corporation, Ltd., a corporation, engaged in the manufacture of chemical products, and in the sale and distribution thereof, under the trade name of "Purex" in interstate commerce, in competition with other corporations, individuals, partnerships, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Purex Corporation, Ltd., in soliciting the sale of and selling its products "Purex" in interstate commerce, agreed to cease and desist from stating and representing, directly or indirectly on labels, placards, or other advertisements or advertising matter that said product has germicidal or disinfectant properties when taken internally by poultry or other domestic animals; that said product, when used in bathing domestic livestock, will aid in disinfecting surface cuts or sores and/or in preventing the spread of contagious diseases; that said product is non-poisonous under all circumstances or conditions. (Nov. 30, 1936.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

01437. Vendor-Advertiser—Elastic Belt.—Perfolastic, Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a certain belt designated Perfolastic Girdle, and in advertising represented:

I have reduced my hips nine inches with the Perfolastic Girdle;
It massages like magic;
The fat seems to have melted away;
Reduce your waist and hips three inches in ten days;
Reduce *Only Where You are Over-weight*;
The Perfolastic Girdle Kneads away fat at only those places where you want to reduce;
Massage-like Action Reduces Quickly;
Worn next to the body with perfect safety, the tiny perforations permit the skin to breathe as the gentle massage-like action removes flabby, disfiguring fat with every movement * * * stimulating the body once more into energetic health;
Reduce your waist and hips 3 inches in 10 days with the Perfolastic Girdle * * * or no cost;
The successful Perfolastic method requires no effort, diet, drugs, or exercise * * * it is based on the healthful, invigorating principle of massage;
With every move you make, each breath you take, this massage-like action removes those extra inches at just the spot where you want to reduce;
Why not profit by the experience of 200,000 women and reduce the sure, Perfolastic way!
Perfolastic not only confines, it removes ugly bulges;
"Reduced from 43 to 34½ inches," writes Miss Brian;
Every minute you wear it the massage-like action of your unbelievably comfortable Perfolastic is taking off the bulges of unwanted fat;
Perfolastic is the sure means of keeping the figure young and beautiful;
After wearing my girdle for four months, have really reduced five inches through the hips and two and one-half inches in the waist-line;
This new invention—the ventilated Perfolastic Reducing Girdle and Brassiere—bring a long-sought relief in the easiest, quickest, and most pleasant way imaginable;
The Perfolastic Girdle and Brassiere drives away the fat with every move;
It helps to dissolve the fat * * * At the same time it brings an increased vigorous circulation of the blood. * * * Besides taking away the fat, this renewed circulation benefits the entire body;
Test the Perfolastic Girdle and Brassiere at our expense.

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, July 10, 1936, to November 30, 1936, inclusive. For digest of previous stipulations, see vols. 14 to 22 of Commission's Decisions.
For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

The respondent hereby admits:

That according to the weight of scientific opinion, massage alone is not a competent treatment for obesity, and will not result in other than a negligible reduction in weight or measurements in the body or any part of the body;

That the action of respondent's girdle upon the person wearing such girdle is not sufficient to constitute an effective massage;

That wearing of the girdle sold by respondent compresses the body underneath, and being made only of rubber induces heat that causes an increased excretion of perspiration thereby reducing weight in proportion to the weight of the perspiration excreted;

That wearing of the girdle sold by respondent results in temporary reduction of size of weight, but the size and weight returns if the girdle is not worn continuously, or diet, drugs or exercise observed to prevent fat building;

That the use of the appliance would have no appreciable beneficial effects upon bodily health;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Perfolastic Girdle will effect any lasting reduction in weight or measurement;

(b) Generally that the Perfolastic Girdle will effect any definite reduction in weight or measurement within any definite time;

(c) That wearing said girdle will "knead" or "melt" fat away without diet, drugs, or exercise;

(d) That the action of the girdle upon the person wearing the same constitutes an effective massage, or does more than approximate a massage action;

(e) That wearing said girdle will improve in any way bodily health;

(f) That 200,000, or any other number of persons not definitely proven, have reduced weight by using the Perfolastic girdle;

(g) That it massages the body, or that reduction of weight is due to massage;

(h) That it only removes fat in those places where the wearer wants to reduce;

(i) That the perforations in the girdle permit the skin to breathe;

(j) That reduction depends upon, or is based upon massage;

(k) That the girdle brings increased or vigorous circulation of the blood;

and from making any other claims or assertions of like import. (July 13, 1936.)

01438. Vendor-Advertiser—Beverage.—Allen Henderson, an individual, operating as Henderson Beverage Co., Fort Smith, Ark., vendor-advertiser, is engaged in selling a certain product designated 7-Up, and in advertising represented:

Over-eating, over-drinking, under-drinking, over-worry, over-working, over-smoking and mental lassitude are seven hang-overs that may be quickly eliminated with 7-Up.

Sip a glass of 7-Up the next time you have any one of these seven hang-overs— and feel your old-time zip and zest return.

Insist on 7-Up—the perfect mixer that will pep you up and protect you against headaches, biliousness, unsettled nerves and other "morning after" ailments.

Drink 7-Up and drive off that morning after headache.

Over-indulgence of any kind, smoking, eating or drinking need not be feared—take 7-Up in the morning and watch that fuzzy, unpleasant feeling disappear.

You can be the life of the party—free from unpleasant morning after headaches, biliousness, shaky nerves, if you drink 7-Up—the tasty, zestful drink that pep-you-up!

7-Up takes away that unpleasant after-effect caused by too much smoking, eating or drinking—the one way to have a good time at any party without fear of that morning after headache.

Going on a party. Insist on 7-Up and you'll get up in the morning feeling fit as a fiddle.

7-Up has been recommended by doctors and nurses throughout the country for its health qualities.

The acids contained in 7-Up tend to neutralize other acids in upset stomachs.

It's the cure for 7 hangovers—for over eating, over drinking, under drinking, over work, worry, over smoking and the dull feeling that may result from over reading or thinking.

The respondent hereby admits:

That, according to the weight of scientific authority, 7-Up is not a competent treatment for over-eating, over-drinking, over-worry, over-working, over-smoking, mental lassitude, headaches, biliousness, unsettled nerves and other "morning after" ailments.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That over-eating, over-drinking, under-drinking, over-worry, over-working, over-smoking and mental lassitude may be quickly eliminated with 7-Up;

(b) That sipping a glass of 7-Up will make one feel the old-time zip and zest return;

(c) That 7-Up will protect one against headaches, biliousness, unsettled nerves and other "morning after" ailments;

(d) That 7-Up is "the cure" for the 7 hangovers—over-eating, over-drinking, under-drinking, over-work, worry, over-smoking and the dull feeling that may result from over-reading or thinking;

(e) That 7-Up has been recommended by doctors and nurses throughout the country for its health qualities;

(f) That the acids contained in 7-Up tend to neutralize other acids in upset stomachs;

and from making any other claims or assertions of like import. (July 13, 1936.)

01439. Vendor-Advertiser—Ladies' Coats.—Breslau, a corporation, Washington, D. C., vendor-advertiser, is engaged in selling ladies' fur trimmed coats, and in advertising represented:

Ladies' Fur Trimmed Coats—"Marmink"

The respondent hereby admits:

That the term Marmink used to designate the fur used in trimming certain of its coats comes from the Marmot, a fur bearing animal, and is dyed to resemble or simulate mink.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing:

The furs used in trimming respondent's coats in any other way than by use of the correct name of the fur as the last name of the description and respondent agrees that when any dye or blend is used in simulating another fur the true name of the fur appearing as the last word of the description will be immediately preceded by the word dyed or blended compounded with the name of the simulated fur.

and from making other claims or assertions of like import. (July 16, 1936.)

01440. Vendor-Advertiser—Correspondence Course.—A. R. Patterson, an individual, operating under the trade name of Patterson School, Rochester, N. Y., vendor-advertiser, is engaged in selling a correspondence course of instruction designated to prepare the student for Civil Service Examination, and in advertising represented:

Undoubtedly many of the thousands of "emergency" positions created by the N. R. A. and A. A. A., and other Bureaus will soon be put in the Classified Civil Service (protected by Civil Service Laws), and opened up to citizens through Civil Service examinations.

My catalogue "How to Secure a Government Position" tells the truth about Government positions and how to get one.

Join me now says Uncle Sam. The United States Government appoints many thousands of persons each year to its different branches. With the phenomenal growth of this country it is a safe prediction that the yearly appointments to the United States Government service will soon rise to a greater number. The foregoing letters are convincing proof that my Expert Personal Instruction will increase your ability and make sure that you will pass the Government Examination and get an appointment. Increased Ability, therefore, means greater earning power.

I guarantee you will pass Civil Service examination with my help. Free Book shows How I Help You Get One. Write today for my big 32-page Free Book. Tells everything you want to know about government jobs and how to go about getting the one you want. No obligation whatsoever. Time important. Don't hesitate! Write Now to Arthur R. Patterson, Civil Service Expert, Patterson School, 187 Wisner Bldg., Rochester, N. Y.

Get a full picture of just what a Government position can offer you and the time tested easy Patterson way to get the one you want.

Learn how easily I can help you to land a steady, high income position in Washington or near your home or traveling.

Pick the job you want, I'll help you get it. You can work in your home town, travel, or work in Washington.

The respondent hereby admits:

That he does not procure positions in government service for any person, either directly or otherwise except so far as his training and instruction given his students enables them to pass the Civil Service examinations and secure a higher rating;

That the only service rendered students enrolling with respondent is to impart certain information and give certain training by correspondence that may enable students to pass the Civil Service examinations and attain a higher rating on the eligible list, and also respondent notifies his enrolled students of pending examinations when announced by the Civil Service Commission;

That the claims as to the future increase in the number of employees in the Government service or the classification of Government employees represent the opinion of the respondent;

That neither the instructions and training furnished by the respondent to his students nor any other course of instruction or training can make certain that the student will either pass any examination he may take or having passed it, that he will receive an appointment thereafter;

That passing a Civil Service examination merely places the name of such person on an eligible list to be called when his or her name is reached in due order.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the course of instruction will make sure that a person will pass the government examination, or get an appointment, or that the passing of the examination and procuring of the appointment are guaranteed or insured;

(b) That he does any more than impart by correspondence certain information and training that may help purchasers of his training courses to pass Civil Service examinations;

(c) That "undoubtedly" many of the thousands of emergency positions created by the N. R. A. and A. A. A. and other bureaus will soon be put in the Classified Civil Service and opened up to Civil Service examinations;

and from making any other claims or assertions of like import. (July 16, 1936.)

01441. **Vendor-Advertiser—Food Products.**—Mrs. G. Charvot, an individual doing business under the trade name of Byron Tyler, Kansas City, Mo., vendor-advertiser, is engaged in selling a certain food product designated Tyler's Macerated Wheat, and in advertising represented:

Tyler's Macerated Wheat is a mixture of scientifically prepared wheat *macerated and mixed* with pure sun dried fruits and nuts.

For thirty-six years, Tyler's Macerated Wheat has been endorsed by thousands of users, including many doctors, dieticians, and health authorities, throughout the United States and abroad, who testify to the great benefits derived thru its use in relieving constipation, stomach trouble, etc., and bringing the weight to normal.

For More Than 36 Years Tyler's Macerated Wheat has been recognized by many dieticians, physicians, health magazines and discriminating people in all walks of life as a food of merit and of *unusual effectiveness* in many serious cases of *stomach trouble and constipation*. Thousands of satisfied users all over the world.

Proper Elimination—A Mighty Contributor to Good Health. Constipation is the forerunner of many ailments. What is the underlying cause of most disease? Sluggish digestion, constipation, body poisons backing up into the system. *Get rid of the poisons! Clean out your system thoroughly.* No radical change in your eating. No dope or drugs. *Use Nature's plan.*

This is strictly a scientifically prepared natural food, a combination of Macerated Whole Wheat, Nuts, and Fruit. The vital ingredients are not devitalized or destroyed by heat or cooking. Macerated Wheat is especially rich in iron and phosphorous, the great blood and nerve builders.

It contains potassium which keeps the joints, ligaments, arteries, and muscles elastic; magnesium, essential in eliminating body waste; and calcium, the great bone and tooth builder. With a diet of Macerated Wheat and accessories, the digestive improved and constipation solved in a natural manner.

Macerated Wheat is not a laxative. It is, however, a natural regulator. Indigestion, nervousness, and stomach disorders are quickly relieved with its use. It is a great good for all people of all ages, because it supplies the right elements in their natural organic state. To enjoy perfect health and strength the body must be supplied with the twelve mineral and four vital elements in their proper equations. Constipation, indigestion, and other distressing stomach disorders indicate a lack of the necessary mineral elements—the vitamins and mineral salts which are to be found in natural raw goods—always inadequate in cooked foods.

Thousands of people, bedridden, would quickly improve and often regain their health by the adoption of a raw food regime. They have nothing to lose and everything to gain by following this simple and natural means of self treatment.

Man, of all beings of creation, is the most sickly. Compared with the wild animal he is a puny weakling, physically unable to take care of himself. There is one primary cause for this alarming degeneration of mankind and that is his ever present method of eating an excessive amount of *demineralized over-cooked foods*. It is a scientific fact that heat destroys many valuable mineral salts and other ingredients of the food. We do not advise one to instantly make a radical change in their method of eating, yet one must eat some raw foods with each meal. The successes achieved with a raw food diet are indeed wonderful. The body being supplied, in easily digestible form, with substances it requires for its nutrition and development, an agreeable sensation of bodily warmth, soon makes itself felt and with it a new sense of vigor and power; the mind is clear, and a feeling of well being and joy comes into life.

For Acid Stomach. If troubled with acid stomach drink a glass of hot water containing the juice of half a lemon, each morning upon arising. For breakfast, eat two or three tablespoons of Macerated Wheat with an orange cut up therein. Or, if preferred, drink a glass of orange juice and then mix a small amount of butter and honey in the Macerated Wheat. This will generally remove the gas, undigested and decomposed foods from the stomach and intestines, neutralize and change the acids of the stomach, to prevent excessive fermentation.

Doctor Uses Macerated Wheat. I recommend you to any and all who need to reduce their weight or restore their health.

Have been using it for about six years with splendid results (am now in my 78th year, hale and hearty) feel like a youngster, do my regular work in a furniture repairing. Macerated Wheat is a *wonderful regulator*. Will recommend it, whenever there is a chance.

* * * Will say I have been using your Macerated Wheat since 1922. I was always constipated and had to take something all the time till I began to use your Wheat. It has made a new man of me. I am just as regular as anyone of my age. I am 73 years old but people guess me from 60 to 62 years old. Work all the time, ride 25,000 miles a year in auto, and feel young and full of "pep."

CURED ME OF STOMACH TROUBLE

WOODSTOCK, ILL.

DEAR MR. TYLER: I think your Macerated Wheat is wonderful. I eat a little every day to keep in shape. Some years back it cured me of stomach trouble * * *.

OPERATION UNNECESSARY

ROCK VALLEY, IOWA.

DEAR SIR: I am glad to say a good word for your Macerated Wheat. It has helped my stomach very much. As I was about ready to go to the hospital to have an operation for ulcerated stomach, I started taking the Wheat and never went to the hospital. This is about five years ago. Also is very good for constipation * * *.

EAT YOUR WAY TO HEALTH

For 30 years stomach sufferers have eaten Tyler's Macerated Wheat to get well. It is a natural relief.

Constipation yields often in 24 hours.

The respondent hereby admits:

That this product contains important ingredients in addition to wheat;

That, according to the weight of scientific opinion, the potassium content of this product will not keep the joints, ligaments, arteries, and muscles elastic; and this product is not an adequate treatment for such diseased conditions as indigestion, nervousness, stomach disorders, constipation, or acid stomach;

That the statement that the human race is degenerating because of the consumption of demineralized over-cooked foods has no basis in known scientific facts.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That her product will keep the joints, ligaments, arteries and muscles elastic;
- (b) That her product is an adequate treatment or competent remedy for:
 1. Indigestion
 2. Stomach disorders
 3. Stomach ulcers
 4. Constipation
 5. Acid stomach
 6. Nervousness
- (c) That her product will cause constipation to yield within 24 hours;
- (d) That her product will regulate the bowels;
- (e) That her product will make a surgical operation for stomach ulcers unnecessary;
- (f) That her product will rid the system of poisons and clean out the system thoroughly;
- (g) That her product will reduce one's weight and restore health;
- (h) That her product will supply the twelve mineral and four vital elements necessary to the enjoyment of perfect health and strength;
- (i) That thousands of bedridden people would quickly improve and regain their health by the adoption of a raw food regime;

(j) That her product, consisting of raw wheat and other raw ingredients, is a necessity because the human race is degenerating because of the consumption of demineralized over-cooked foods;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of her product in interstate commerce, to cease and desist from using a trade name which indicates or implies that the product is composed entirely of wheat. (July 16, 1936.)

01442. Vendor - Advertiser—Medicinal Preparation.—The Olive Tablet Co., a corporation, Columbus, Ohio, vendor-advertiser, is engaged in selling Dr. Edward's Olive Tablets, and in advertising represented:

If nature fails to maintain a regular schedule take a beauty laxative. Olive Tablets are just the thing for the purpose.

You can't expect to have a peaches-and-cream complexion unless you maintain regular habits of elimination. They bring about the desired result promptly.

You cannot realize how much better you will feel and look until you try Dr. Edward's Olive Tablets. Many women need internal cleansing to remove the cause of blemishes, pimples, headaches, and that dull lifeless feeling.

The Internal Cosmetic.

Take Dr. Edward's Olive Tablets if you want to banish the "looks" and feeling of age, and win back buoyant health.

Clear, radiant complexion and sparkling eyes, are necessary to a beautiful face. Olive Tablets can help you have both.

The dull mind, fear, worry, anxiety, may come from poisons caused by food improperly digested. Then we need a laxative—Olive Tablets.

We all want our days filled with happy, eager activity; ambitious to do whatever task arises. But we can't be that way when fermenting impurities generate poisons in the bloodstream. At such times we need Olive Tablets.

They are mild, gentle, and get to the root of the trouble.

These poisons sap energy and vitality, make sallow complexions, unsightly skins and generally lower resistance. Millions of people have found that Olive Tablets are a definite aid in avoiding such conditions.

If you're the victim of a sluggish, rundown system, of course, you won't have much energy. That's why we suggest Dr. Edward's Olive Tablets.

And they help remove the cause of that sluggish, tired feeling, that poor complexion.

Safe, pleasant and effective.

Gentle, safe yet thorough, Olive Tablets help remove the cause of that dull, tired feeling in no time.

* * * find them mild, safe, pleasant to take and pleasant in results.

Scientifically compounded of vegetable ingredients, Olive Tablets assist regularly * * * safe * * * non-habit forming yet effective.

Olive Tablets are the efficient substitute for calomel.

* * * try Olive Tablets every night for just one week * * * and see how full of pep and life you are * * * how your skin clears up and you look better in every way.

Try them every night for a week and see how quickly that tired, sluggish feeling vanishes and you feel better than you've felt for years.

Take them every night for a week and see how they give you new life and energy and clear up your skin * * *

Take them every night for a week and see how they help make that dull, tired feeling vanish * * * how they give you new life and energy and clear up your skin * * * They're more than just a laxative. They help remove the cause of that sluggish condition.

They're safe, efficient substitute for calomel, too * * * and easier to take.

Olive Tablets are for the whole family * * * safe, gentle, yet thorough * * *

* * * they are safe, gentle, non-habit forming, yet thoroughly affective.

These scientifically compounded tablets assist regularity and help restore the physical health and buoyance which are so necessary for happiness.

Try them every night for a week * * * and see if they don't give you renewed energy, if they don't improve a dull or blemished skin * * * make you feel like a new person.

My wife insists upon me advising you that taking your Olive Tablets for the brief period of two months, has resulted in making her feel positively like a new * * * and a well * * * person.

* * * faulty elimination. If you are suffering from that, there is something specially made to put you among those who have a sparkle and a smile. That 'something' is Olive Tablets.

Olive Tablets are the only laxative necessary for good health and happy hearts.

They help bring back health and vitality, simply because they sweep from within you the wastes and poisons which hurt.

A harmless vegetable laxative, they put to flight the enemies of youth, vigor and vitality.

The respondent hereby admits:

That the therapeutic action of Dr. Edward's Olive Tablets is limited to the temporary relief of constipation and will not correct constipation;

That said preparation is not an internal cosmetic, nor a substitute for calomel;

That the efficacy of said preparation is dependent upon its laxative action which enables it to relieve such conditions as are associated with and due to constipation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent treatment or an effective remedy for constipation, unless confined to the temporary relief of constipation;

(b) That said product is an internal cosmetic;

(c) That said product gets at the root of the trouble;

(d) That said product is a substitute for calomel;

(e) That said product will remove all blemishes, pimples, headache, or that tired, lifeless feeling;

(f) That said product is more than just a laxative;

(g) That by the use of said product one can—

1. Maintain regular habits of elimination;
2. Banish the "looks" or feeling of old age;
3. Win back buoyant health;

(h) That the use of said product will help one to have a clear, radiant complexion, sparkling eye, or a beautiful face;

(i) That said product will relieve one of conditions caused by food improperly digested, or from poisons or impurities in the blood stream;

(j)¹ That said product will avoid poisons, sallow complexions, unsightly skins, lower resistance, or a sluggish run-down condition.

(k) That said product is the only laxative necessary for good health;

and from making any other claims or assertions of like import. (July 16, 1936.)

01443. Vendor-Advertiser—Medicinal Preparation.—Larre Laboratories, Inc., a corporation, Denver, Colo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated "Zeptabs", and in advertising represented:

"I now have my health and my happiness, thanks to Zeptabs."

Zeptabs—a tablet absolutely safe and harmless, yet so potent it will not only destroy all living germs in the vaginal tract, but all invading germs as well.

Zeptabs, prepared from the formula of an eminent European doctor * * * are sure, dependable, safe, non-irritating and convenient to use.

Zeptabs are recommended by hundreds of well-known physicians.

Zeptabs are the Sure, Safe, Harmless antiseptic for married women.

Zeptabs serve as a corrective and preventive of such female ailments as vaginitis, leucorrhoea, catarrhal and inflamed conditions of the vaginal tract. Unbelievable relief is found in the use of Zeptabs, antiseptic tablets, by women suffering from such afflictions.

After introduction into the vagina, Zeptabs dissolve rapidly, giving off gas and oxygen, entirely destroying germ life. Furthermore, this gas penetrates the folds and curves thoroughly, getting results other methods do not obtain.

Zeptabs are a preventive also against venereal diseases of both sexes.

Married women, why worry? Use Zeptabs. Safe—Sure—Convenient.

The respondent hereby admits:

That, while Zeptabs may be effective as a contraceptive in some instances, it cannot be said to be effective in all cases;

That, according to the weight of scientific authority, Zeptabs is not a competent remedy in the treatment of vaginitis, leucorrhoea, catarrh, and inflamed conditions of the vaginal tract, nor is it entirely devoid of harmful qualities;

That Zeptabs cannot be relied upon to prevent venereal diseases of both sexes;

That no bacteriological tests have been submitted to establish that the product is either definitely germicidal or antiseptic under the conditions of use, even though it may be germicidal or antiseptic in the test tube.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Zeptabs are absolutely safe and harmless, unless notice given that they must be used strictly according to directions;

¹ Inhibition (j) is published as corrected by supplemental stipulation accepted by the Commission Mar. 8, 1937.

(b) That Zeptabs will destroy all living germs in the vaginal tract or all invading germs as well;

(c) That Zeptabs are a competent remedy in the treatment of vaginitis, leucorrhoea, catarrhal and inflamed conditions of the vaginal tract;

(d) That Zeptabs penetrate all the folds and curves of the vaginal tract, or get results other methods do not obtain;

(e) That Zeptabs prevent venereal diseases of both sexes;

(f) That Zeptabs are sure, or dependable;

(g) That married women need not "worry" when using Zeptabs;

(h) Inferentially or otherwise, that Zeptabs can be "relied" upon to prevent conception;

(i) That said product is antiseptic, unless in the manner in which its use is recommended it meets the scientific tests of an antiseptic;

and from making any other claims or assertions of like import. (July 16, 1936.)

01444. Vendor-Advertiser—Medicinal Preparation.—Ben Turoff, an individual, Lees Summit, Mo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated TAR-ZEME, and in advertising represented:

Also effective for Eczema as proved by reports from hundreds of users.

No Eczema Whatever at Present.

I am very much pleased with the results of Tar-Zeme. For years I have suffered with Psoriasis and could never find a *permanent cure*. I give you permission to use my name and letter in your leaflet. I hope all psoriasis sufferers will try just one more thing and use Tar-Zeme

I have suffered with Psoriasis for over seventeen years. I had never found any permanent relief, having used diets, violet-ray treatments, arsenic, and ointments. Have been to some of the very best skin specialists, also taken treatments from medical doctors.

I am now on my second box of your European ointment and must say I am almost cured and I have hopes that I will be entirely well soon. Would not think, of being without this wonderful ointment.

Had Psoriasis Over 16 Years!

KANSAS CITY, Mo.,

October 18, 1934.

Mr. BEN TUROFF,
Lee's Summit, Mo.

DEAR MR. TUROFF: I have had Psoriasis for over sixteen years, having started in my scalp. The last five years has been very, very bad, thickly covering back, arms and chest.

I had never found any permanent relief, having used diets, lights, ointments, etc. The one box of European Ointment I purchased from you has lasted two months, and I never want to be without it again. The scales have all disappeared, and the itching and all night scratching has too. Even the thought of being relieved is worth the money.

Healed In 6 Weeks After 16 Years of Psoriasis.

COMMERCE, OKLA.,

October 27, 1934.

Mr. BEN TUROFF,
Lee's Summit, Mo.

DEAR SIR: I have had an *eczema* on my hands since January, 1934. Was under a doctor's care for over three months, used every kind of salve and medicine recommended to me, but nothing was of any relief.

Your medicine was recommended to me through my niece in Kansas City in August and *I am entirely healed on both hands*. The skin is soft and smooth.

My friend I referred to in my last letter is *entirely healed*, and am very happy to say she is planning to write you a letter of recommendation too, very soon.

I really believe it has healed my hands. There is not a trace of the eczema on my hands at the present time, and I sincerely hope it never returns.

Had Spent Lots Of Money Without Relief!

I have used Tar-Zeme now 30 days and I think I have plenty to finish healing the Eczema on Mrs. S * * * leg. The ulcer is all healed up and the Eczema is all gone except two or three red spots but they are not sore and they do not have a scale or scab on them.

Eczema Relieved On Baby!

CONWAY, MO.

Mr. BEN TUROFF,
Lee's Summit, Mo.

DEAR SIR: Your medicine couldn't be better. My baby had Eczema on her leg, a spot as big as the palm of your hand.

We tried everything we could find before as she couldn't sleep she itched so bad.

I am keeping your name and address and if there is ever a trace of it again I will order a box at once. I have recommended it to several of my friends and will keep doing so. Mrs. P. I.

No doubt you have been busy as we all have been. However, I do not want you to neglect the letter I wrote you previously. There is nothing more I can say in this letter than what I told you in my first letter. However, there are a few thoughts that bear repeating and if the repetition of these thoughts will eventually lead to relief for you for your Psoriasis or Eczema, then I will feel this letter has served its purpose.

The respondent hereby admits:

That, according to scientific opinion this product is not a cure for psoriasis nor an effective treatment for all the various types of eczema and cannot be depended upon to produce permanent results.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Tar-Zeme is a cure for psoriasis; or that when used in such cases it will produce permanent results;

(b) That Tar-Zeme is an effective treatment or a competent remedy for eczema, unless limited to relief from burning or itching;

and from making any other claims or assertions of like import. (July 17, 1936.)

01445. Vendor-Advertiser—Correspondence Courses.—Lewis Hotel Training School, Inc., a corporation, Washington, D. C., vendor-advertiser, is engaged in selling certain correspondence courses of instruction designated Lewis Hotel Training Course, Lewis Food Management Course and Lewis Candy Making Training Course, and in advertising represented:

Manage an Apartment Hotel—Women Wanted as Apartment Hotel Managers, Assistant Managers, Housekeepers, Cashiers, Floor Clerks, etc.

Train Now for hotel, club and institutional field. Salaries of \$1,800 to \$5,000 a year, living often included.

As a Lewis Student you will be preferred by hotel operators everywhere.

* * * appointed several years ago Managing Consultant for over 300 Hotels throughout the United States.

Money Back Agreement— * * * The Lewis Hotel Training School will refund the full amount of tuition paid, providing you return all textbooks, lesson material and diploma.

If you could afford to hire the entire Lewis Faculty to tutor you privately—if you could bring all the instructors right into your own room, while you are studying, it would still be impossible for you to secure better training or a more thorough understanding and appreciation of your particular problems, than you can through the Lewis Course.

Get your pencil. Do some figuring. Our training should increase your earnings at least \$50 a month. It costs you one-tenth that or \$5 to acquire the knowledge that will make your services worth \$50 more every month to some attractive hotel where your position is pleasant, you meet nice people, you get good pay. Just to give you an example of salaries paid in the hotel field—look over the following:

A good clerk earns up to \$250 a month with his or her board usually included;

Housekeepers up to \$300 per month with meals, apartment and laundry frequently included;

Accountants from \$200 to \$600 a month usually with meals;

Managers from \$3,000 to \$25,000 a year with meals and room included;

Stewards from \$125 to \$375 usually with meals and room;

Headwaiters from \$100 to \$275 a month frequently with meals;

Cashiers up to \$250 a month often with meals and room.

Individual guidance through the Department of Instruction under the personal supervision of Clifford Lewis.

The expansion, opportunity and advancement are so great in hotel, restaurant, club, school, and institutional work that it has been estimated that in the next year there will be 99,697 positions in the United States in hotels, clubs, restaurants, schools, colleges, hospitals, and institutions.

Our Executive Committee has suggested that somehow I have failed to answer the objections that are in your mind. Frankly I am at a loss. I have done my utmost to show you what I have done for thousands of men and women in exactly the same position as you are today—and what I have done for others, surely I can do for you.

Surely you see that it is Your future success that we are concerned about * * * Your future earnings. If it were merely a matter of selling a course of training we would not write you so often, for if you don't enroll some other ambitious person will * * * so it is not the selfish thought of getting an enrollment that makes us persist in trying to interest you.

Here's Positive Proof I Can Help Raise Your Pay \$50 a Month and More!

* * * earnings that my training should assist you to double and triple in an amazingly short time!

This unusual offer surely proves my confidence in the claim that this course of training will lift you into the well paid class, in a field of ever-growing opportunities.

In my last letter I told you about my unusual "Make Good" offer which enabled you to defer 38% of your tuition fee until 6 months later—when your training will have enabled you to step into and "make good" in a well-paid restaurant, cafeteria, tea room, coffee shop or tavern position.

Because I was anxious to see You enroll—because I wanted to see your name amongst the hundreds of Lewis Graduates who have “made good” in the uncrowded home-made candy field—I went to the Finance Committee of our School and persuaded them to let me offer you our complete candy course for only \$2.00 a month. They argued about it—said professional candy thermometer Alone was worth more than that. And It Is! But because I was determined to give every ambitious man or woman who wrote me the best possible terms, I kept after the Committee until finally I won out.

No matter what your previous experience—even though you’ve never cooked a thing in your life—the Lewis Thermometer Method Insures your making perfect, quick-selling candies from the very beginning.

The respondent hereby admits:

The Lewis Hotel Training School does not employ its graduates but does make an effort to keep in touch with hotels, restaurants and institutions as to vacancies and advises its graduates of such vacancies when they occur;

That average salaries of hotel employees are much less than the amounts stated in advertising. The amounts so stated are exceptional and not the rule or average;

That graduates of the Lewis Hotel Training School are not preferred by all, or even a major portion of hotel operators everywhere;

That the “appointment” of Clifford Lewis as a consultant to hotel managers consisted of their acceptance of his services offered gratis;

That there can be no assurance that the Lewis Hotel Training School courses will increase the earnings of any individual by any definite amount, or that every student can do what others have done;

That the Executive Committee of the School does not follow up individual inquiries from prospective students;

That a graduate of this school is not usually as capable of filling a position in a hotel as one who has spent years in the hotel field;

That no assurance can be given that every graduate of the Lewis Schools will secure a position, or that there are “enough positions to go around”;

That the Lewis Thermometer cannot insure everyone’s making perfect, quick-selling candies from the very beginning;

That the supervision by Clifford Lewis is not “individual” so far as the student is concerned, but is limited to his contact with the faculty.

That a student can obtain instruction more readily and thoroughly by personal contact with a tutor than by correspondence, even with the same instructor.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By direct statement or by reasonable inference that the Lewis Hotel Training School has any jobs to be filled, or—

1. That the school needs any additional students to meet requirements of its placement service,
2. That any persons are “wanted” in this field;

(b) That salaries range from \$1,800 to \$5,000 per year in the hotel field;

(c) That Clifford Lewis has been “appointed Managing Consultant” to over 300 hotels;

(d) That it would be impossible to secure better training or a more thorough understanding of the problems in this field by private instruction personally by the Lewis faculty than by the correspondence course;

(e) That the course or courses sold by this school will increase the earnings of a student by any definite amounts, or

1. That this training should assist one to double and triple his earnings in a short time, or
2. That this training "will" have enabled one to step into and make good in a well paid position in 6 months;

(f) That the salaries paid various hotel employees are any definite amounts unless and until such figures are supported by adequate, reliable evidence;

(g) That a student receives "individual guidance" "under the personal supervision of Clifford Lewis";

(h) That any number of positions will be open and filled in the hotel field unless and until such figure is limited to positions for which this school offers training, and are supported by competent, reliable evidence;

(i) Directly or by reasonable inference that the executive committee of the Lewis Hotel Training Schools considers each inquiry and follows it up until an application for enrollment is received;

(j) That Clifford Lewis has accomplished given results in thousands of cases and can "surely" do the same for anyone else;

(k) That Lewis Hotel Training Schools are not interested in securing enrollments, but only in the future success of prospective students;

(l) That a Lewis graduate is capable of filling any position in the hotel and institutional field just as efficiently as if he had spent years in the hotel field;

(m) That all or even a major portion of the hotel operators everywhere—

1. Prefer Lewis graduates,
2. Call upon the Lewis Placement service every time a vacancy occurs in their organization, or
3. Know that Lewis graduates are loyal and conscientious;

(n) Directly, or by reasonable inference, that every graduate of the Lewis Schools will secure a position, or that there are "enough positions to go around";

(o) That Clifford Lewis keeps after the Finance Committee to secure special rates on any courses in certain cases;

(p) That the Lewis Thermometer Method insures the making of perfect, quick-selling candies from the very beginning, even if one has had no previous experience;

and from making any other claims or assertions of like import. (July 17, 1936.)

01446. Vendor-Advertiser—Medicinal Preparation.—Acquin Products Co., a corporation, St. Louis, Mo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated—Acquin, and in advertising represented:

To Relieve Slight Head Colds and Sore Throat the Acquin way is the quick way and the safe way. One or two Acquin Tablets usually bring relief. Follow directions on leaflet in package and forget about your head cold and sore throat.

Get Acquin and get rid of that Morning after Head. Why pay today for last night's fun, when one or two Acquin Tablets and a glassful of water will bring

glorious relief in just a few minutes? Acquin is quick—Acquin is safe. Contains no quinine, no opiates, no narcotics. Works like a charm.

This is the way thousands now use to avoid severe sore throats.

Acquin works wonders for women who suffer regular pains each month.

How Acquin soothes away * * * nervousness that regular pains bring.

How to Ease a Cold before it has a chance to take hold.

For Colds and Sore Throat.

It acts as an antiseptic in the throat, soothing the raw, inflamed tissues, easing the soreness and rawness.

Medical science now traces 17 dread diseases to simple colds that are allowed to hang on. In the forefront of these are flu and pneumonia. And not far behind are 15 others of similar danger. Just look at this list and see what your neglected cold may lead to:

Broncho-Pneumonia, Lobar-Pneumonia, Influenza, Pleurisy, Grippe, Catarrh, Laryngitis, Deafness, Bronchitis, Tonsillitis, Sinusitis, Mastoiditis, Meningitis, Tharyngitis, Trachetitis, Tuberculosis, enteritis.

This way quickly reduces fever and eases the aches and pains that come with common colds. It acts as an antiseptic in the throat, soothing the raw, inflamed tissues, easing the soreness and rawness.

Quickly relaxing thousands of tiny nerve ends thruout the body, these merciful tablets bring glorious relief.

If you would like more invites, take a tip from these modern girls and carry a tin of Aquin at all times. These merciful tablets work wonders for women who suffer from "regular" pains.

Prevent germs from multiplying in the membranes of the throat.

The Acquin people who make Acquin, that ideally compounded remedy for all sorts of aches and pains, colds and sore throats.

Acquin is a pain remedy that can be used for practically every pain.

There is no necessity of losing valuable time from work or play when Acquin will relieve you almost instantly. This is particularly true when you suffer from nervous headaches and fidgety uneasiness caused by overwork or excessive mental strain.

Why let a cold get you down when Acquin will keep you up?

Acquin is the ounce of prevention that should be taken the very moment that you detect a sore throat, head or chest cold.

The Miracle Ingredient in Acquin!

The respondent hereby admits:

That Acquin is not a competent treatment or an effective remedy for colds or sore throat;

That according to the weight of scientific authority, aspirin has a depressing effect on the hearts of some individuals;

That Acquin will not relieve the severe pains associated with dysmenorrhea;

That when taken internally, the effect of Acquin is to block and retard or prevent reception of impulse nerve reports by the nerve center from the nerve ends throughout the body; when applied externally, to desensitize the nerve ends in the area where it is applied and thereby retard or prevent the sending of nerve impulse reports to the nerve center;

That certain statements purporting to be the experience of certain individuals were not the testimony of such persons, but were simply advertising copy written in the first person;

That Acquin is not an antiseptic;

That this preparation does not contain any "miracle ingredient."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Acquin is a competent treatment or an effective remedy for colds unless specifically limited to the relief of pain incident to a cold;

(b) That Acquin is a competent treatment or an effective remedy for sore throat unless specifically limited to the pain of a sore throat due to a cold;

(c) That Acquin is "safe";

(d) That Acquin will constitute a competent treatment or an effective remedy for the causative factors of dysmenorrhea, or that it will relieve the pains associated therewith unless specifically limited to minor pains; or that one may escape all severe pain by the use of Acquin;

(e) That Acquin will—

1. "Rid" one of a headache, or

2. "Banish" any ache or pain;

(f) That this product will "soothe" nerves, nervousness, or raw tissues;

(g) That this preparation will soothe "away" rheumatic pain, or by any other direct statement or reasonable implication that it will relieve all pain in connection with rheumatism or neuritis;

(h) That Acquin will enable one to avoid a severe sore throat;

(i) That this preparation "works wonders" for women who suffer regular pains;

(j) That Acquin acts as an antiseptic, or that it "prevents germs from multiplying";

(k) By direct statement or by reasonable implication, that Acquin will prevent—

1. Broncho-Pneumonia,

2. Lobar-Pneumonia,

3. Influenza,

4. Pleurisy,

5. Grippe,

6. Catarrh,

7. Laryngitis,

8. Deafness,

9. Bronchitis,

10. Tonsillitis,

11. Sinusitis,

12. Mastoiditis,

13. Meningitis,

14. Tharyngitis,

15. Tracheitis,

16. Tuberculosis,

17. Enteritis,

or other "dread diseases";

(l) That by the use of Acquin, "every trace of pain disappears", or that it "knocks the pain right out of your system";

(m) That by taking Acquin internally, the nerve ends throughout the body are relaxed;

(n) That Acquin is a remedy for "all sorts of aches and pains, colds and sore throats", or "for practically every pain";

- (o) That Acquin is "perfectly compounded";
- (p) That Acquin will relieve "fidgety uneasiness caused by overwork or excessive mental strain";
- (q) That Acquin contains a "miracle ingredient";

and from making any other statements, claims or representations of like import.

The respondent further stipulates and agrees not to publish any statements which, by the use of the first person or other terminology, create the impression that such statements portray the experience of any individual, unless it is in fact a recital of the experience of such individual. (July 17, 1936.)

01447. Vendor-Advertiser—Medicinal Preparation.—A. T. Allen, an individual, trading as A-1 Remedies Co., Spokane, Wash., vendor-advertiser, is engaged in selling a certain medicinal preparation designated A-1 Remedy, and in advertising represented:

Rheumatism, Neuritis, Sciatica, Arthritis * * * It is a formula compounded by a registered pharmacist that gives almost instant relief. Freedom is in sight for these prisoners of pain. Permanent beneficial results are recorded for the A-1 Treatment * * * A-1 Remedies Co.

Rheumatism, Neuritis, Sciatica, Arthritis. If you have it you know real suffering. But why continue to suffer when you can get a safe treatment * * * The A-1 Treatment has brought relief to old and young alike. No case is too stubborn or long standing.

The respondent hereby admits:

That such effect as respondent's product may have in the treatment of Rheumatism, Neuritis, Sciatica, and Arthritis is limited to the temporary relief of pain resulting from such conditions.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or an effective remedy for Rheumatism, Neuritis, Sciatica, or Arthritis unless such representations are limited to the relief of pain resulting from said conditions;

(b) That permanent results may be expected by use of said product;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1936.)

01448. Vendor-Advertiser—Medicinal Preparation.—Health Products Corp., a corporation, Newark, N. J., vendor-advertiser, is engaged in selling a certain medicinal preparation designated CLO-TRATE, and in advertising represented:

Laying hens need more vitamin A than is provided through yellow corn and alfalfa. Unless they get plenty in their feed, the birds will rob their bodies to

put vitamin A in the egg. The result is high mortality—colds, roup, bronchitis, etc. Help stop this loss by using feeds containing Clo-Trate, the concentrated cod liver oil.

Remember—Alfalfa and yellow corn will not provide enough of this urgently needed vitamin A, but Clo-Trate Feeds Will.

Of all cod liver oil Clo-Trate is the most effective because

(1) It is the only oil concentrated in both vitamins A and D.

* * * Vitamin A * * * is effective particularly with diseases of the respiratory tract, such as colds, nutritional roup, bronchitis, etc.

* * * Good feeds must contain an adequate supply of vitamin A * * * what is an adequate supply? Experimental stations * * * state that the laying hen in fairly heavy production requires a minimum of about 1,000 units of vitamin A per day * * * the heavy layer requires approximately 1,400 vitamin A units per day * * * to maintain weight and properly vitaminize the eggs, * * * Where can you secure enough vitamin A to supply these requirements? This vitamin is quite common in feedstuffs. It is found in alfalfa leaf meal, yellow corn, carrots and many greens, but the hen cannot possibly secure enough of these ingredients to supply her vitamin A requirements.

There is but one source of "true" vitamin A—the most effective form of this substance—and that is certain fish liver oils, particularly cod liver oil and its concentrated form Clo-Trate. The vitamin A in feedstuffs is not the "true" form but the pro-vitamin A which is found in carotene and must be converted into "true" vitamin A in the liver of the bird before it can be properly utilized.

The vitamin A potency of Clo-Trated feeds stored for six months has been periodically checked on poultry and no evidence of deterioration found. So, do not worry about Clo-Trated feeds losing their vitamin A and D content.

The average poultry ration needs Vitamin A.

Chickens, like people require so much Vitamin A and Vitamin D that additional supplies must be provided in the ordinary ration. Vitamin D, sometimes called the sunshine vitamin * * * there is practically none of this important factor in grains and roughage.

These birds show the value of the concentrated vitamin A in Clo-Trate. Both are fed a vitamin A deficient ration in which white corn replaced yellow corn. The bird at the left received Clo-Trate, and the bird at the right another oil which supplied the same amount of vitamin D but a smaller amount of vitamin A. At 12 weeks of age, the Clo-Trate bird weighed nine ounces more than the other bird. Vitamin A made the difference.

University experiment station tests have proved that the amount of pro-vitamin A supplied to the ration from alfalfa leaf meal and yellow corn is not enough by nearly 50%.

The respondent hereby admits:

The necessary vitamin A requirements of poultry can be procured from some vegetable materials and it is not necessary that this vitamin be procured from sources other than such vegetable materials except in cases of poultry raised in strict confinement, or in semi-confinement, which cases, in the aggregate, comprise approximately 50% of the poultry raised in the United States;

Except where there is a sub-optimal supply of vitamin A, the addition of this vitamin to the rations of poultry affected with ailments of the respiratory tract would be of no therapeutic benefit;

While respondent's product of itself may remain stable in its vitamin potency for an indefinite period, it is offered for sale to feed mixers who conceivably would incorporate it in a wide variety of mixed feeds and under such conditions it will not remain stable in such potency indefinitely;

The respondent further admits that as a means of representing the efficacy of its product it published photographs of poultry, graphs, charts and other data based upon results of experiments conducted in which respondent's product and competitive products were fed to poultry in conjunction with a diet otherwise free from vitamin A, and the difference in benefits to poultry as shown by such experiments is not necessarily indicative of the benefits that may be normally expected from the use of respondent's product inasmuch as a normal or average diet was not used as a control.

The respondent further admits that it formerly represented its product to be the only product containing a concentrate of vitamins A and D, but upon receipt of information that a competitive product contained a concentrate of vitamins A and D the respondent immediately discontinued the statement, without intent to resume, before receiving any inquiry from the Federal Trade Commission, and the respondent agrees that as long as there is such a competitive article on the market this statement will not be repeated.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That laying hens or other poultry need more vitamin A than is supplied by certain vegetable materials or that such vegetable materials will not provide enough of this vitamin or that the average poultry ration needs an addition of vitamin A unless such representations are limited to poultry raised in strict confinement, semi-confinement, or under seasonal, climatic or other conditions that would prevent poultry from securing food containing a sufficient amount of vitamin A;

(b) That respondent's product will be of benefit in treating colds, roup, bronchitis, etc., unless clearly represented in connection with such claims that the benefits claimed will obtain only when there is a sub-optimal supply of vitamin A;

(c) Directly or otherwise that respondent's product will remain stable in vitamin A content in all types of feeds for unusual or long periods of time;

(d) By the use of photographs, graphs, charts or otherwise that the benefits indicated by the results of experimental tests may be expected from the use of said product unless in such tests the experimental groups and the control groups are each fed a normal or average poultry ration;

and from making any other claims or assertions of like import. (July 17, 1936.)

01449. **Vendor-Advertiser—Cosmetics.**—James H. Bereman, an individual, operating under the trade name of The Stillman Co., Aurora, Ill., vendor-advertiser, is engaged in selling certain cosmetics designated—

Stillman's Pimple Remover
Stillman's Freckle Cream

Stillman's Skin Food and
Stillman's Complexion Soap,

and in advertising represented:

You can banish those annoying, embarrassing freckles quickly and surely in the privacy of your own room.

When Stillman's, this cool, fragrant cream, is smoothed on the skin, freckles, blotches, tan, sallowness all vanish, pores are refined, the complexion becomes white and radiant as a baby's skin.

We know we can help you rid your skin of these spots as in the past 37 years we have brought happiness to many others who also had stubborn freckles.

Skin food * * *

How do you keep your skin so soft, fresh, and flawless?

Rita: That's a secret, maybe I'll tell you some day * * *

Marvelous Treatment for Removing Pimples.

Don't let yourself become unpopular because of unsightly pimples. They're so unnecessary. Stillman's soothing, healing, Pimple Remover beautifies like magic. Smooth on this cool, fragrant cream at night—wash away those white pimples and skin eruptions in the morning. Just a few applications reveal a new, clear, radiant complexion. Your friends will marvel at your velvety soft, blemish-free, petal-smooth skin.

Stillman's Complexion Soap removes facial blemishes gently—whitens too.

Stillman's Pimple Remover Dries up those pimples already formed.

The respondent hereby admits:

That Stillman's Freckle Cream will not permanently remove freckles;

That neither Stillman's Freckle Cream, Stillman's Pimple Remover, or Stillman's Complexion Soap will remove all skin blemishes, regardless of cause;

That according to the weight of scientific authority, there is no article known which will serve as a food for the skin.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Stillman's Freckle Cream will—

1. Enable one to "banish" freckles,
2. Make the complexion white and radiant in every case,
3. Make freckles, blotches, tan, sallowness all vanish,
4. Help "rid" one of freckles,
5. Keep the skin "flawless" in every case;

(b) That Stillman's Pimple Remover—

1. Will remove all pimples, regardless of cause,
2. Is "healing",
3. Will, in a few applications, reveal a new, clear radiant complexion,
4. Produces a blemish-free skin,
5. Dries up all pimples;

(c) That Stillman's Complexion Soap will remove all facial blemishes;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from the use of the phrase "skin food", in the trade name of a product or in other advertising literature. (July 20, 1936.)

01450. **Vendor-Advertiser—Perfumes.**—John A. Kammerer, an individual, Terre Haute, Ind., vendor-advertiser, is engaged in selling perfumes, and in advertising represented:

Hollywood Nights. A new sensation in perfume originating in Paris * * * A favorite of the stage and screen stars. \$1.00 introductory bottle sent prepaid for only 25¢.

Magic Lure Lover's perfume * * * Attracts people to you.

Spanish Love Perfume * * * Its subtle fragrance inspires love and romance.

Luxurious French Extracts No Longer a Luxury. "Odeurs de Paris" contain imported French extracts. They are compounded from the same costly ingredients used in the world's most expensive perfumes retailing up to \$30.00 a bottle. Special Offer: Any of the above odors 30¢ each or 4 for \$1.00 prepaid. Special offer: 3 bottles for 50¢.

The respondent hereby admits:

That no perfume "attracts people to you" or "inspires love and romance";

That imported French perfumes of the value of \$30.00 a bottle are not sold for 30 cents each, or 4 for \$1.00, or 3 bottles for 50 cents."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "Hollywood Nights" is a new sensation in perfume, originating in Paris, or is "a favorite of the stage and screen stars";

(b) That "Magic Lure Lover's Perfume" attracts people to the user;

(c) That "Spanish Love Perfume" inspires love and romance;

(d) That an "introductory" bottle of the value of \$1.00 is sold for only 25 cents;

(e) That perfume of the value of \$30.00 a bottle is sold at 30 cents each, or 4 for \$1.00, or 3 bottles for 50 cents;

and from making any other claims or assertions of like import. (July 20, 1936.)

01451. **Vendor-Advertiser—Medicinal Preparation.**—Sharp and Dohme, a corporation, Philadelphia, Pa., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Digitol, and in advertising represented:

Digitol is an instrument of precision for the digitalization of your patients.

With Digitol so uniformly potent and dependable, you can standardize your digitolis expectation.

Contains therapeutically desirable constituents of the digitalis leaf, free of inert matter.

Digitol Mulford may be safely administered after one year or longer by slight adjustment of the dosage.

The respondent hereby admits:

That, according to the weight of scientific opinion, Digitol is no more an "instrument of precision" than U. S. P. tincture of digitalis and that Digitol is no more free of inert matter than U. S. P. X tincture of digitalis; and that the accurate standardization of digitalis or Digitol requires expert training.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Digitol is an instrument of precision for the digitalization of patients;
- (b) That "you" can standardize your digitalis expectation;
- (c) That Digitol is more free of inert matter than tincture of digitalis U. S. P. X;

and from making any other claims or assertions of like import. (July 20, 1936.)

01452. Vendor-Advertiser—Ladies' Coats.—Whitney's, Inc., a corporation, Washington, D. C., vendor-advertiser, is engaged in selling ladies' fur trimmed coats, and in advertising represented:

Ladies' coats trimmed with:

- French Beaver
- Vicuna
- Marmink
- Sealine
- Cross Fox
- Manchurian Wolf

The respondent hereby admits:

That its ladies' coats are not trimmed with the furs of the animals designated in its advertisements, but that said furs are from animals other than those designated and are dressed and dyed to simulate or resemble the furs of the animals indicated in its advertisements;

That its Sealine coats are made of dyed coney.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Describing the furs from which respondent's coats and collars are made in any other way than by the use of the correct name of the fur as the last name of the description; and respondent agrees that when any dye or blend is used simulating another fur, the true name of the fur appearing as the last word of the description will be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur;

(b) Using any geographic term to describe a fur unless such fur actually comes from the region indicated or implied;

and from making any other claims or assertions of like import. (July 20, 1936.)

01453. Vendor-Advertiser—Appendicitis Cure.—George E. Hartley, an individual, Centralia, Ill., vendor-advertiser, is engaged in selling a

recipe alleged to constitute a cure for appendicitis, and in advertising represented:

A Simple Remedy for appendicitis without operation. 25¢ will cure any case. Recipe 25¢. Reg. price \$1.00. Satisfaction guaranteed or money back every home should have this recipe to have and to hold for future use. This is a special offer and may be withdrawn any time.

The respondent hereby admits:

That said recipe consists of timothy seed and the same does not constitute a competent treatment or an effective remedy for appendicitis;

That this recipe is regularly offered to the public for 25¢

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this recipe constitutes a competent treatment or effective remedy for appendicitis, or that it—

1. Will cure any case,

2. Is guaranteed to give satisfaction;

(b) That the regular price of this recipe is \$1.00, or that an offer to sell it for 25¢ is a "special offer";

and from making any other claims or assertions of like import. (July 27, 1936.)

01454. Vendor-Advertiser—Medicinal Preparations.—Foley & Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling certain medicinal preparations designated Foley's Rectal Salve and Foley's Honey and Tar Cough Syrup, and in advertising represented:

The very first application of Foley's Rectal Salve gives blessed relief. This new preparation for itching, bleeding or protruding piles almost instantly draws out the inflammation. Cools, soothes and stops itching and soreness. Helps shrink painful, swollen blood vessels. Enables you to sit, walk and sleep in real comfort.

Piles are actually small tumors * * * But don't submit to knife until you try new, wonderful Foley's Rectal Salve * * * Gives the relief you need.

Foley's Rectal Salve is hard to beat. Almost instantly it stops pain, itching and burning.

Now feels like new! Men, women everywhere are happy for glorious freedom from the torment of itching, burning, bleeding piles and hemorrhoids this new way. They simply spread Foley's Rectal Salve on the sore parts to soothe and help shrink the swellings.

Foley's Rectal Salve, a new prescription, gives prompt, soothing relief from tortures of itching, burning and soreness of blind, bleeding or protruding piles.

Foley's Rectal Salve, in addition to containing an anaesthetic to kill pain, an antiseptic against infection, and a balm to promote comfort, contains this high content of tannic acid which toughens the weakened and formerly distended tissues so that the blood vessels that had run amuck before and caused the piles are held in place and made far less likely to become piles again.

How to End Piles Without Operating. New pile relief, also protects against further pile attacks. Science now finds how large percentage of pile sufferers can completely conquer piles without cutting. By this new scientific method the enlarged, irritated vein (or pile), is emptied, shrunk back to normal, and the weakened fibres toughened against becoming a pile again. The new Foley's Rectal Salve is formulated to embody this great development. Consequently, it quickly stops all itching, burning pain; speeds the healing of the raw bleeding tissues; aids piles to empty, shrivel up. And Most Important, this quick, pain-killing, penetrating salve toughens the shrunken fibres, once distended, thereby protecting against the return of the piles.

Relief, or Money Back Guaranteed! Get back the pep, vigor, health you had. Get rid of piles and their daily pain. Protect against possible complications (such as cancer). Postpone that operation until after you try Foley's Rectal Salve. Unless 3 treatments convince you that you'll soon recover, your money refunded.

One treatment, pain goes; several treatments piles go.

New recipe amazing pile sufferers here with positive fast relief from torture or itching, burning, bleeding piles even where other remedies fail. Acts to draw out pain—then shrink up swollen parts.

How to End Piles Without Operating. Relief or Money Back Guaranteed. New Scientific Method, embodied in Foley's Rectal Salve, enables pile sufferers to escape knife.

Foley's Rectal Salve penetrates pile so they vanish.

Piles shrivel up. Pain and itching stopped in one minute.

You can safely rely on Foley's Honey and Tar for quickest results.

Again good old-fashioned Foley's Honey and Tar Cough Syrup proves it is the quick relief for cold-coughs * * * Goes right to the spot.

Loosen cough with 3 doses of Foley's.

Stop that cough! * * * Stop it by the "quickest by test" way with the famous Foley's Honey & Tar. Now intensified with 6 other speed ingredients so that it also helps correct cause. Quickly relieves tickling, hacking, coughing. Spoonful at night insures sleep free from coughing.

Foley's Honey & Tar instantly relieves tickling, hacking spells of coughing and expectorating.

Kill that Cough! Foley's 5 point Action Works Double Quick * * * Foley's Honey and Tar famed for 5-point Action: (1) Honey soothes raw throat. (2) Tar loosens congestion. (3) Stops tickle. (4) No narcotics. (5) Does not upset the stomach.

You can safely rely on Foley's Honey & Tar for quickest results.

The first spoonful soothed the throat lining and relieved her cough so *quickly* that I was happily surprised.

If you're suffering with a cold cough, no matter *how stubborn*, just do this. Get a bottle of *Foley's Honey and Tar Cough Syrup* at your druggist's. Take a spoonful. Let the honey and tar compound trickle down your throat. Feel it *cool* and *soothe* those raw, inflamed throat tissues. Notice how *quickly* the clogging phlegm is loosened. Foley's hits the spot! It brings relief at last. *Foley's Tastes good and does good.*

Just *three* doses of Foley's Honey and Tar Cough Syrup loosens the cough!

Foley's Honey and Tar Cough Syrup * * * It brings quicker relief because it's made by the exclusive tares process.

Here's a sporting offer every cougher should accept. Foley's Honey and Tar Cough Syrup will check your cold-cough in three doses or your money will be refunded.

Foley's Honey and Tar also helps correct the cause. Its honey and tar have been intensified by 6 other ingredients, making Foley's double acting. One set of ingredients soothes and cools the inflamed tissues whose aggravation makes you cough. Another set works into the system and helps speed recovery.

Foley's Honey & Tar (now intensified with 9 other speed ingredients).

The respondent hereby admits:

That, while Foley's Rectal Salve may give temporary relief (lasting for various periods of time) to burning, itching, and soreness of hemorrhoids or rectal irritations, and that while its astringent action may aid in relieving the minor bleeding often associated with hemorrhoids, except for palliative relief afforded, it is not considered by reliable medical opinion as a competent treatment for advanced or severe cases of blind, bleeding, or protruding piles; nor will it affect the cause of such a condition;

That as a soothing, demulcent, expectorant mixture, Foley's Honey and Tar Cough Syrup will exert some mild influence on the mucous membranes of nose, throat and bronchial tubes, such as loosening the phlegm, thereby having some value in the relief of less advanced coughs due to colds—and that it has a tendency to adhere to the lining of the throat, thereby forming a soothing film over the irritated areas, it cannot be depended upon to relieve severe coughs associated with colds or such conditions as bronchitis, laryngitis, trachitis, etc.; it is not regarded as a competent remedy in the prevention and treatment of the complications of a cold (other than the cough); it has no beneficial effect on coughs caused by conditions other than a cold, or irritations or tickling sensations of the throat associated with the inhalation of dust, fumes, excessive smoking, and in some instances, excessive use of the voice.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Foley's Rectal Salve is a "new" prescription that "almost instantly" stops pain, itching, burning and soreness of blind, bleeding, or protruding piles;

(b) That Foley's Rectal Salve

1. Prevents infection;
2. Toughens weakened and formerly distended tissues;
3. Protects against further pile attacks; or
4. Empties or shrinks back to normal the enlarged, irritated vein;

(c) That Foley's Rectal Salve will

1. End piles without operating;
2. Conquer piles without cutting;
3. Get rid of piles and their daily pain;
4. Restore pep, vigor or health;
5. Protect against possible complications; or
6. Enable pile sufferers to escape the knife;

(d) That "one treatment, pain goes; several treatments, piles go";

(e) That relief is "guaranteed";

(f) That Foley's Honey and Tar Cough Syrup

1. Can be safely relied upon for "quickest results";
2. Goes right to the spot;

3. Stops coughs;
4. Is "quickest by test";
5. Is intensified by 6 other speed ingredients, or 9 other ingredients;
6. Helps correct the cause of a cough;
7. Insures sleep, free from coughing;
8. Kills that cough; or
9. "Works double quick";

and from making any other claims or assertions of like import. (July 27, 1936.)

01455. Vendor-Advertisers—Medicinal Preparation.—W. M. Roth and J. H. Roth, co-partners, operating under the firm name and style of The Norma-Lite Co., Des Moines, Iowa, vendor-advertisers, are engaged in selling a certain medicinal preparation designated Norma-Lite and in advertising represented:

Norma-Lite Improves and Restores Nature's Method of Reducing Weight—without the use of Laxatives, Harmful Drugs and Dieting.

Norma-Lite brings the proper mineral balance that is missing in the body of a fat person. Since it has taken months or years to accumulate fat, it will take a little time for Norma-Lite to reduce your weight safely and harmlessly.

Norma-Lite is designed to give you new pep and energy—let you eat all of the nourishing food you care to within temperate limits—and enjoy life and happiness, while you are reducing this sure way through proper assimilation and elimination.

To reduce safely and the way nature intended—Norma-Lite tablets should be used over a reasonable length of time. Best results, as our testimonials show, are received when the body has obtained the proper mineral balance.

Am so glad to get rid of a few of my extra pounds, and I feel so much better.

Norma-Lite is the most reliable method there is for obesity in America today.

Norma-Lite has been so designed that it brings to the body the proper mineral balance that you are now lacking, and supplies these lacking secretions in the way nature intended.

Your overweight condition is proof that your system has become sluggish and inactive. When Norma-Lite is taken it may be difficult to quickly restore normal weight and to overcome these evils in a short time.

Norma-Lite adjusts the system so that you should not lose more than 5 pounds per week and not less than 2 pounds in two weeks. It invariably gets results.

Therefore Strengthen Your Glandular System With the Proper Mineral Balance.

Normalizing the cellular structure is the most reliable method there is for obesity today, as is shown by the thousands of unsolicited testimonial letter contained in the office files.

Norma-Lite is its name, and it safely accomplishes weight reduction and helps eliminate many ailments caused from an overweight condition. The body, so to speak, is remineralized by supplying proper minerals for glandular secretions, minerals to normalize the digestive organs, thyroid gland and other organs. When the system is so remineralized fat gradually starts to leave and you look and feel better.

When this is accomplished you will note a general improvement in health and a stronger glandular system.

If you have an earnest desire to reduce, I shall be very happy to have you do as thousands of men and women have from coast to coast; correct the cause—and then, slowly but surely, rid yourself of needless weight; safely and sanely—the Norma-Lite Way.

More than 20,000 Iowans alone have taken Norma-Lite this past twelve months—many on professional recommendation—.

Users invariably report that Norma-Lite not only reduces but makes them feel better and enjoy good digestion * * *.

Norma-Lite pleases because it acts slowly and surely, just as your doctor would suggest best for you.

We Are Confident you will get desired results with Norma-Lite in ninety days!

Norma-Lite is¹ scientifically prepared to correct or restore the "normal balance" to all digestive organs and tracts, and to aid in their proper assimilation of all foods taken into the system.

Improper functioning of these important organs and tracts now prevents them from rightly eliminating food elements which create excess fat, with the result that one soon becomes aware of increasing weight.

We honestly believe that the seven valuable elements in Norma-Lite * * *.
* * * practically positive yet *safe* and harmless reducing tablet * * *.

This authoritative book gives latest scientific information on all methods of reducing, including dieting, exercises, garments, medicines, etc.

It is reported reading this book is worth more than a visit to a highly paid specialist in reducing.

The respondents hereby admit:

That the use of this article for the purposes recommended by the respondents would, in many instances, produce harmful results;

That the principal ingredient of this product will activate that phase of metabolism known as katabolism, but will not produce the other physiological results claimed in the foregoing advertisements;

The reduction of weight brought about by the use of this product would not be "natural";

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Norma-Lite is a natural method of reducing weight or that it improves or restores nature's method of reducing weight;
- (b) That this preparation is safe, or that it—
 1. Will reduce your weight safely and harmlessly, or
 2. Contains no harmful drugs;
- (c) That Norma-Lite will give one new pep and energy;
- (d) That this preparation will effect a reduction in weight by—
 1. Proper assimilation and elimination,
 2. Promoting the proper mineral balance,
 3. Supplying lacking secretion,
 4. Correcting body deficiency,
 5. Normalizing the cellular structure,
 6. Re-mineralizing the body,
 7. Supplying proper minerals for glandular secretions, or minerals to normalize the digestive organs, thyroid gland, or other organs,
 8. Correcting or restoring the normal balance to all digestive organs and tracts;

¹ Norma-Lite absolutely Does Not contain Dinitrophenol!

(e) That the use of this product will "rid" one of weight, or "do away with" fat;
 (f) That Norma-Lite is the most reliable method there is for obesity in America today; or that it is at all reliable where safety and possible complications are concerned;

(g) That this product will constitute a competent treatment or an effective remedy for a sluggish or inactive system, or is a scientific way of correcting body deficiency;

(h) That Norma-Lite "adjusts the system so that a definite amount of weight is lost in a specified time, or at all;

(i) That this preparation will strengthen the glandular system;

(j) That this product will improve the health or digestion;

(k) Directly or indirectly that physicians prescribe this preparation generally for use in effecting a reduction of weight, or that it acts as a doctor would prescribe in every case;

(l) That Norma-Lite contains seven valuable elements, or that it contains any ingredients in addition to boric acid and thyroid extract desiccated;

(m) That reading a book published by the advertiser and entitled "Secrets of Reducing" is worth more than a visit to a specialist in reducing;

(n) That Norma-Lite does not contain Dinitrophenol, so long as the fact is concealed that it does contain thyroid extract or other harmful ingredients;

and from making any other claims or assertions of like import.
 (July 27, 1936.)

01456. **Vendor-Advertiser—Facial Device.**—Florence Lund Brown, an individual, trading as Contour-Ette Co. and Body Glove Co., Chicago, Ill., vendor-advertiser, is engaged in selling a facial device designated Contour-Ette, and in advertising represented:

Banish wrinkles and sagging face muscles. Regain the glory of youthful charm this new and better way. Restore the smooth, firm, fresh look of youth without dangerous operations or costly massage. Simply wear safe comfortable Contour-Ette. This remarkable beauty aid strengthens weak face muscles and gently smooths away wrinkles from eyes, forehead, mouth, throat and chin. You'll look years younger * * * Fully protected by patents. Non-elastic. Special proposition to agents who want to make \$35 a week and more * * * Territories are going fast. Contour-Ette Company.

The Contour-Ette. Restore your facial contour. Lure back your youth and beauty. Smooth out wrinkles from forehead, eyes and mouth corners. No more double chins. Contour-Ette helps by lifting the sagging muscles.

After wearing it only a few minutes, one senses that uplifting, exhilarating feeling which comes from its unusual effect in raising all the muscles which have to do with the beauty of one's face, chin and neck. It is designed to carry out these fundamentals of beautifying.

Use a Contour-Ette. Reduce double chin, wrinkles.

End double chin and wrinkles. This amazing new discovery, the Contour-Ette, eliminates facial wrinkles and double chin, lifts up and rejuvenates sagging facial muscles * * * fits any face * * * Body Glove Co.

The respondent hereby admits:

That respondent's product is purely a mechanical device and as such is without any particular benefit other than that which may be ordinarily accorded a facial bandage;

That the efficacy of this device in the treatment of the facial conditions named has not been scientifically demonstrated;

That respondent has furnished no evidence that any of her agents have earned the amounts represented in her advertising as possible to be earned.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling her said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That said device or the use thereof will banish wrinkles or sagging face muscles;
- (b) That use of said device will enable one to regain the "glory" of youthful charm or "lure back" youth and beauty;
- (c) That said device or the use thereof will restore facial contour or the "look" of youth;
- (d) That said device or the use thereof strengthens facial muscles or that it "smooths away" wrinkles;
- (e) That said device has any effect on the fundamentals of beauty;
- (f) That said device or the use thereof will reduce or end double chin or wrinkles or that it eliminates wrinkles or double chin;
- (g) That said device or the use thereof rejuvenates sagging muscles;
- (h) That by use of said device one will have "no more double chins";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees:

- (i) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business;
- (j) 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 or dealers under normal conditions in the due course of business;
- (k) 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 or dealers under normal conditions in the due course of business; and
- (l) 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 or representation of earnings. (July 27, 1936.)

01457. Vendor-Advertiser—Instructions.—Herman White, an individual, trading as White Co., Northampton, Mass., vendor-advertiser, is engaged in selling a folio of instructions for obtaining employment, and in advertising represented:

Female help wanted! Ladies—Copy names and addresses. Good pay. Easy work. Send 3¢ stamp for details.

People are wanted who are honest and steady to mail circulars for Mail Order Dealers and other firms engaged in selling merchandise by mail. If you are sincere and need work you can earn from \$10 to \$25 a week by following the instructions we send you.

To offset the expense of compiling the detailed instructions telling you how you can turn Your Spare Time Into Actual Cash, and also to keep out curiosity

seekers, idlers, and undesirables who will only waste our time, we require the payment of \$1.00. A small investment surely when you consider that you will soon be in a position to make from \$10 to \$25 weekly.

Successful workers are those who start at once by taking full advantage of this unusual opportunity to earn up to \$25 weekly.

A large mail order company has notified us that they want people to do addressing and mailing of their literature. They send you envelopes, fillers, stamps and instructions for doing the work. You are paid the first and 15th of each month. When you send for your folio of instructions we will send you the name and address of this company.

Address and mail circulars for mail order concerns. Earn \$15 weekly. Send stamp for details.

The respondent hereby admits:

That the details of respondent's plan are contained in a folio of instructions for obtaining employment, which folio is sold for \$1.00 and not furnished for 3¢ as stated in contact advertisements;

That said folio of instructions would not enable purchasers to earn the amounts stated in the advertisements;

That mail order houses are not paying people every day in the week, nor any return for mailing circulars;

That there is no mail order company wanting persons to do addressing and mailing letters for it;

That respondent has no employment to offer.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the respondent has employment to offer by placing advertisements in newspapers or magazines under a "Help Wanted" classification or otherwise;

(b) That details will be furnished for a price less than that actually charged by said respondent for his folio of instructions;

(c) That prospective purchasers of respondent's folio of instructions can earn amounts in excess of the average amounts earned by former purchasers of said folio;

(d) That any mail order houses or firms are paying people every week for mailing circulars for them;

(e) That a mail order house wants people to do addressing and sending out literature for it, unless and until such be the fact;

(f) That the price charged for respondent's folio, represents the amount necessary to offset the cost of its compilation;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees:

(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 persons following respondent's plan under normal conditions in the due course of business.

(b) Not to make unmodified representations or claims or earnings in excess of the average earnings of persons following respondent's plan achieved under normal conditions in the due course of 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 persons following respondent's plan under normal conditions in the due course of business. (July 27, 1936.)

01458. **Vendor-Advertiser—Medicinal Preparation.**—Santo Ceribelli, an individual, trading as G. Ceribelli & Co., New York, N. Y., vendor-advertiser, is engaged in selling a preparation designated Brioschi, and in advertising represented:

Unfortunate mixtures of foods or stimulants create a condition of excess acidity in the system.

Brioschi will pep you up.

Incorrect eating and over-indulgence also cause an acid condition of the stomach which leads to many annoying health problems. For rapid, welcome relief from distress caused by excess acidity, try Brioschi.

Brioschi * * * restores the normal necessary alkaline balance.

Its ingredients * * * are simple and natural in their action.

In many cases of acid-indigestion, a laxative is not the advisable thing to use. Simply use Brioschi.

Many of our troubles are caused by excess acidity in the stomach brought on by incorrect diet, over-indulgence or improper combinations of food. Brioschi has been used in Europe and this country for over 55 years. * * * for the relief of disturbances caused by excess acidity in the system. This delightfully refreshing drink will provide prompt and certain relief from sour stomach, acid-indigestion and kindred ailments associated with under-alkalinity.

Are you suffering from a cold? If you are, you have many companions in your misery. Cold germs thrive when the system is under-alkaline. Excess stomach acidity renders the system more liable to the ravages of cold germs. You can neutralize this over-acidity with Brioschi.

Brioschi Effervescent Granules have been correcting abnormal acid conditions since 1880 for millions of people.

March is a dangerous month. It represents 31 days of fickle, unreliable weather. To insure yourself against this uncertain weather, it is necessary to clothe carefully, to avoid exposure and to get proper rest and relaxation. Protect yourself against fatigue and lowered resistance. A below par vitality will render you more liable to the harmful effects of cold germs. Guard, therefore, against acid indigestion and kindred ailments which lower your resistance. To maintain the normal alkaline balance so necessary to good health, use Brioschi.

We've been telling you repeatedly about the value of maintaining a normal alkaline balance in order to resist cold germs. Maintaining this balance is necessary, however, to resist any form of illness * * * excess acid is an important contributing factor to many serious ailments. You can guard against acid-indigestion and other forms of over-acidity, which lower your resistance, with * * * Brioschi.

A dangerous factor over-acidity is * * * take immediate means to eliminate it. Even dentists have come to recognize the marked increase in tooth erosion caused by acid in the mouth which dissolves the enamel of the teeth. Many other disturbances that cause physical distress are the direct result of abnormal accumulations of acid in the system. To maintain the normal alkaline balance so necessary to good health, use * * * Brioschi.

The function of this delightful beverage is to restore the normal alkaline condition necessary to the healthy being.

Brioschi * * * to correct the distress from over-eating and indigestion.

Two spoonfuls in half a glass of water followed by a full glass of plain water will wash out the ptomaine-like accumulations from the stomach.

To relieve and prevent bodily disorders which are incident to excess acidity such as headache, sour stomach, gas pains, heartburn, and similar every day ailments, drink Brioschi * * * with this famous effervescent preparation you can quickly and effectively dispel these ailments and correct their cause.

It will restore your system to normal.

Two teaspoonfuls diluted in a glass of water are sufficient to rid your stomach of gas and acidity.

You can eliminate immediately stomach trouble by neutralizing excessive acidity by taking a drink of effervescent Brioschi.

By making use of Brioschi, you can eat foods to your delight without suffering any stomach ailment and avoid further consequences.

This anti-acid immediately corrects, in short time, stomach acidity. It eliminates heartburn and permits the stomach to function without difficulties.

By making use of Brioschi, you can eat foods to your delight without suffering any stomach ailments.

Brioschi * * * is the best remedy against stomach acid and indigestion.

Try it before breakfast and you will have renewed energy for the rest of the day.

The respondent hereby admits:

That the therapeutic effect of respondent's product is limited to its anti-acid effect in relieving temporary conditions of the stomach due to hyperacidity.

That the product is not manufactured in Italy.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That mixtures of foods or stimulants create a condition of excess acidity in the "system";
- (b) That said product will "pep you up";
- (c) That an acid condition of the stomach leads to many annoying health "problems";
- (d) That the product is "natural in its action";
- (e) Inferentially or otherwise that said product has no laxative action;
- (f) Inferentially or otherwise that said product will prevent colds or that it will have any effect on cold "germs";
- (g) That said product will correct any condition of the stomach;
- (h) That said product will restore a normal alkaline condition;
- (i) That said product has any effect on the "ptomaine like" stomach conditions;
- (j) That said product will prevent headaches, sour stomach, gas pains or heartburn;
- (k) That said product will restore the system to normal;
- (l) That said product will rid the stomach of gas or acidity;
- (m) That by use of the product foods can be eaten without suffering any stomach ailment;
- (n) That said product is a "remedy" for stomach acid or indigestion;
- (o) That use of said product will give one renewed energy;
- (p) That said product will eliminate stomach "trouble";

(g) That said product will have any value in the treatment or prevention of tooth erosion;

(r) That said product is manufactured in Italy;

and from making any other claims or assertions of like import. (July 28, 1936.)

01459. Vendor-Advertiser—Food Preparation.—R. M. McLain, D. C., an individual, Oakland, Calif., vendor-advertiser, is engaged in selling Dr. McLain's Vitamin Food and in advertising represented:

Now we relate some of the symptoms which may result from the deficiency of sulphur in the body. One is retarded growth, another is dermatitis which is inflammation of the skin, obesity, rheumatism, diseases of the nervous system. We find that the lack of sulphur may be responsible for the piling up of impurities in the body, failure of the liver to handle its materials properly.

First is gloomy in the morning, tendency to numbness and stiffness, hysterical outbursts, granulated eyelids, food aggravates before 11:00 A. M., maniacal desire for open doors, continual trouble with throat and stomach, an acid stomach, fitful indigestion, craving cold water over the feet, tendency to eat or collapse, feel worse an hour afterwards, pains travel downward, strong light irritates the eyes, sense of weariness and weakness, red, shiny nose tip, peevish, irritated by trifles, dislike for cookery odors and fumes, rosy appearance yet full of pain, throw off covers from feet at night, in a diet milk may cause nausea, feet burn, nervous, irritated, tingling, chiming in ears, heart palpitates upon climbing, dropsical with cold in knees, night sweats on the chest, moisture soothes, rush confuses, doctor thinks sickness is imaginative, great dislike for strangers, quarrels quickly, pleads, cries, tendency to read trash, severe motion produces stiff neck, burning sensation in the abdomen, sleepy, dull, torpid in the morning, dryness of skin and gums, swelling of the liver and also of the spleen, pulsation in these parts, swelling of the abdomen. Now we have given you some of the chief characteristics pertaining to the functioning of one of the body essentials known as sulphur, also some of the characteristic symptoms of its deficiencies or hunger in the body.

First, catarrh, another is tuberculosis, neuralgia, face becomes bloodless and pallid, dislike for work, feeling there is something wrong, dreaded future, numbness in some part of the body, insensibility to pain, loss of control of hand and arm, twitching of the muscles of the eyelids, tendency to scrofula, beanlike knots form in glands of the neck, paralysis, neurasthenia, bronchitis, nervous disorders, albuminuria, jaundice, depression, having a dark blue or green color of any wounds that might appear on the body, defective bone metabolism, degenerative changes in the body, great emaciation in arms and limbs, slowness in learning to walk, child wakes and screams at night, enlarged and swollen bones, variable temperature. Now that concludes the listing of the phosphorus hunger symptoms.

We find that sodium is the one outstanding alkalizer of the body, is the digestive chemical, the good nature and clear brain element which prevents catarrh, deafness, hardening processes, and moodiness.

When it becomes deficient we find such conditions as indigestion in appearance, and iron insufficiency, and old age deposits, also indicative of such conditions as constipation, diabetes, excessive flatulency, indigestion, and a poor water retention of the tissues, as well as a condition known as miners' cramps. Now I will give you at this time some of the sodium hunger symptoms as we find them in the body owing to the deficiency of sodium. One is gout, another indigestion, rheumatism, frontal headaches, bloating, poor smell, catarrh of the nose,

fear of drafts, murky complexion, burning face, dry tongue, and also a dry skin, cold feet, sleepy during the day, heart trouble, gastric disturbances, irritability, fears downward motion, excessive acidity of the stomach, cannot read small print, confusion of the mind, weariness, tired spells, hysterical moods, vertigo, mental depression, melancholia, gloomy, physical exhaustion, irritated nerves, fear, clorosis, excessive thirst, falling hair, asthma, hay fever, throat ailments, sciatica, jerking of the eye lids, requires newer and newer glasses, numbness, cramps, stomach erosions, hardening of the arteries, neuritis, dry salivary glands, cold drinks produce pain, stiff and short tendons, white spots in palms of hands, catarrh of the throat, digestion of fat and starches and sweets below normal, sulphur food produces gastric disturbances, poor smell, catarrh of throat and lungs. Now we find these to be some of the characteristic symptoms developing as result of sodium deficiency. You may think that in that listing that I enumerated everything that there was in the manner of human ailments, but there are many conditions there that I did not mention and those I did mention are all along the same line, they are all due chiefly to the deficiency of sodium in the body.

Whenever iron is deficient in the body we find that such conditions arise as anemia, a pallid complexion, retarded growth, paleness, the individual is run down and in a weakened condition, and they have a very poor resistance. Now I think it appropriate at this time to give some of our iron hunger symptoms. Remember these may sound like all the symptoms in the category of disease, but it is in just one chain of disease in the body, they are all kindred. We have here at the head a palpitation of the heart upon arising, perspires and flushes upon one side, tendency to colds in the head, face pale one time and flushes another, murky yellowish gray face, crying against will, peevish, whiny, disheartened, trivialities unsurmountable, fatigued by reading, conversation, fearful of losing reasoning powers, alternating pain in the spleen and kidneys, crave stimulants and indigestibles, fullness and dryness of the throat, tender nostrils, laxity of organs, not held in place, dry hacking cough, trembling of lower limbs, cold hands and feet, intolerable itching, pulsation in the finger tips, painful lungs, rattling breath, heavy chest with a blood taste in the mouth, tightness in the head, constriction of heart muscles, seeing of fog and film in front of eyes, sore hot inflamed eyes, desire to carry arms above head, pain in shoulder joints, tired nerves, lively evenings and stupid mornings, nervous, fussy, tearful, hysterical, heavy pressure in stomach, can see better in dark, tenderness in liver and abdomen, lame arms, stiff neck, the characteristic symptom—*anemia*, asthma, feel the need of bracing tonics, neuralgia, face burns and presents an ashen gray color, small of back weak and tender, suffocation spells, poor eye sight, soles of the feet burn, lower limbs cold in cold weather, swollen ankles, fault finding tendency, oppressive respiration, partial deafness, desire for long walks in fresh air, food only partially digested, stinging headaches, crave rest and quiet, sleepless at night and sleepy in the day time, hard to please, want to weep and touchy, partial deafness, murmur heard in heart, anemic blood, acid blood, poor eye sight, small of the back weak and tender, cerebellum under tension, poor equilibrium in the nerves of the finger tips, weakness of the muscles.

At the head of the list is laborious thinking, listlessness, looking into the distance, ennui, sighing, brooding, fear, getting into a groove, lacks executive power, complaining, distrust, pessimism, weak will power, grief, about trivial conditions, weak courage, mental aggravations, hemorrhages, trembling, soft bones, deformities, imperforations, displacements, closures, alterations, chilblains, ugly scars, one limb shorter than the other, cysts, catarrh, obesity, tumefaction, decomposition of tissue, purulent formation, suppuration, lack of coagulability, incoherent speech, earthy complexion, sluggish movement of the red corpuscles, sensitive to

moisture, involuntary artificial breathing, afternoon headaches, dizzy in the open air, sensitive to atmospheric pressure, staggering upon arising, perspiration in the dark, heaviness of head, early sleepiness, sleeplessness after midnight, icy sensations in the spine, defective blood, slowness in walk, tardy convalescence, wounds do not heal, lameness of flexors, venous dilation, jelly-like bones, palpitation upon ascending stairway.

We take the low blood pressure type who has this anemia, wax complexion, negative mind, and somewhat slow in movements and thoughts. We find that these people are unusually starved for vitamins and organic salts, and we find it necessary to add the vitamin ingredient to their diet in order to build them up in almost all cases. In other words, in the general diet it is sometimes difficult to get sufficient amount of vitamin and organic salts to meet the demands of the body. Now in dealing with human ailments we find it necessary in most instances to give treatment and the dietetic issue, we are giving somewhat a complete service. Whenever we treat a patient for a deficiency of some kind and add vitamin food concentrates to their diet, we find that there is usually a very favorable response, but there are so many people in the world today who cannot afford to take office treatment, they are not in a position financially and otherwise to assume treatment for their particular ailments, and for these I think that a vitamin food concentrate is ideal, because most everyone who is ill is deficient in vitamins in some manner or other, and by adding to their daily dietetic routine the Vitamin Food Concentrate I can feel assured that they cannot go wrong, and according to reports which we receive from so many people and from personal contact with patients, it is almost a universal saying with these people that they feel stronger soon after taking Vitamin Food Concentrate, and the reason is that we are meeting the demands of nature to the extent that we are giving the body that which it demands.

A great many people are like this today. They are very sallow, underweight, cold extremities—cold feet, cold hands, they have gastric disturbances and everything they take into the body and are very anemic, somewhat negative, in fact every mannerism of their body seems to be run down to a certain degree. They are this way chiefly because they do not get enough food in the body, because they cannot digest it, and they begin to eliminate foods until they get down to a graham cracker and broth. We have to consider that the body demands a certain Variety and quantity of food, and it demands organic salts and vitamins, and the reason why this lady has received improvement in her condition is chiefly because the vitamins contained in Vitamin Food Concentrate have strengthened the digestive condition. In her improved digestive condition she has been able to digest the food. This will raise the blood pressure, will increase circulation in her body, and so on. So then all around improvement has been due to the vitamins contained in Vitamin Food Concentrate which is something nature demands.

Add it to your daily diet and by so doing I believe, and I base my belief upon observation and experience with this product, that your health would improve by its use. We find in most instances when we receive reports from people who use Vitamin Food Concentrate that they become stronger and feel better after using this natural health food product of vitamins.

So around this case of heart condition of this man who has been using Vitamin Food Concentrate for four months and wrote me the letter I read to you today giving the improvement of his condition, it is quite evident that Vitamin A, B and E have been the three vitamins that are chiefly responsible for this improvement.

We find people undernourished, anemic, emaciated, slow, weak pulse rate, heart disturbances, many of these people will testify that they have found benefit in

the usage of vitamins they consider that vitamin food concentrates are of value to their case and there is a sound reason and logic for these assertions because it seems as though nature just simply demands vitamins.

If you do not have an appetite, it is because of indigestion, and in all manner of digestive disturbances we find the vitamins profitable. My vitamin food concentrate is so prepared that it can be digested by a very delicate digestive system. Many people reach the place where they consider it impossible to digest any food. We have many of these conditions with which to deal, and it is in consideration of this fact that I have prepared my Vitamin Food Concentrate.

Those are the various disturbances that can arise from gastric disturbances, and it will produce many symptoms—pain and distress in the area of liver, heart-burn, throat disorders, headaches, eye trouble, kidney trouble. All those conditions can be the result of this disharmony of chemistry within the digestive tract, and we can get down to our real serious digestive disturbances such as arthritis, diabetes, etc.

A tuberculosis tendency is spoken about.

This lady has a skin cancer and is taking the Vitamin Food Concentrate.

The respondent hereby admits:

That the only diseases which are characteristic of acute Vitamins A and B deficiency are xerophthalmia and beriberi;

That the ordinary diet consumed in this country contains sufficient amounts of Vitamins A and B to prevent the development of such deficiency diseases, i. e., xerophthalmia and beriberi;

That there is no satisfactory scientific evidence that Vitamin E is necessary for human beings;

That according to the weight of medical authority, specific functions in the prevention and cure of disease has not been assigned to the various minerals.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By direct statement or by reasonable implication, that Dr. McLain's Vitamin Food can be depended upon to prevent—

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| 1. Retarded growth, | 17. Tendency to eat or collapse, feel worse an hour afterwards, |
| 2. Dermatitis, | 18. Pains travelling downward, |
| 3. Obesity, | 19. Tendency of the eyes to be irritated by strong lights, |
| 4. Rheumatism, | 20. Sense of weariness and weakness, |
| 5. Diseases of the nervous system, | 21. Red, shiny nose tip, |
| 6. Piling up of impurities in the body, | 22. Peevishness, |
| 7. Liver disorders, | 23. Irritability, |
| 8. Gloomy in the morning, | 24. Dislike for cookery odors and fumes, |
| 9. Tendency to numbness and stiffness, | 25. Rosy appearance while full of pain, |
| 10. Hysterical outbursts, | 26. Throwing off covers from feet at night, |
| 11. Granulated eyelids, | 27. Nausea by diet containing milk, |
| 12. Maniacal desire for open doors, | 28. Burning feet, |
| 13. Trouble with throat and stomach, | 29. Nervousness, |
| 14. Acid stomach, | |
| 15. Fitful indigestion, | |
| 16. Craving cold water over feet, | |

30. Chiming in ears,
31. Palpitation of the heart,
32. Dropsical with cold in knees,
33. Night sweats on chest,
34. Great dislike for strangers,
35. Quarreling,
36. Pleading,
37. Crying,
38. Tendency to read trash,
39. Stiff neck,
40. Burning sensation in abdomen,
41. Sleepiness,
42. Dullness,
43. Torpidity,
44. Dryness of the skin and gums,
45. Swelling of the liver and spleen,
46. Pulsation of the liver and spleen,
47. Swelling of the abdomen,
48. Catarrh,
49. Tuberculosis,
50. Neuralgia,
51. Bloodless and pallid face,
52. Dislike for work,
53. Feeling there is something wrong,
54. Dread of the future,
55. Numbness,
56. Insensibility to pain,
57. Loss of control of hand and arm,
58. Twitching of eyelid muscles,
59. Tendency to scrofula,
60. Beanlike knots in glands of neck,
61. Paralysis,
62. Neurasthenia,
63. Bronchitis,
64. Nervous disorders,
65. Albuminuria,
66. Jaundice,
67. Depression,
68. Dark blue or green color of wounds,
69. Defective bone metabolism,
70. Degenerative changes in the body,
71. Emaciation in arms and limbs,
72. Slowness in learning to walk,
73. Waking and screaming at night by child,
74. Enlarged and swollen bones,
75. Variable temperature,
76. Deafness,
77. Hardening processes,
78. Modiness,
79. Indigestion in appearance,
80. Iron insufficiency,
81. Old age deposits,
82. Constipation,
83. Diabetes,
84. Excessive flatulency,
85. Indigestion,
86. Poor water retention of the tissues,
87. Miners' cramps,
88. Gout,
89. Frontal headaches,
90. Bloating,
91. Poor smell,
92. Catarrh of the nose,
93. Fear of drafts,
94. Murky complexion,
95. Burning face,
96. Dry skin,
97. Also dry skin,
98. Cold feet,
99. Heart trouble,
100. Gastric disturbances,
101. Fear of downward motion,
102. Excess acidity of the stomach,
103. Inability to read small print,
104. Mental confusion,
105. Weariness,
106. Tired spells,
107. Hysterical moods,
108. Vertigo,
109. Mental depression,
110. Melancholia,
111. Gloominess,
112. Physical exhaustion,
113. Irritated nerves,
114. Fear,
115. Chlorosis,
116. Excessive thirst,
117. Falling hair,
118. Asthma,
119. Hay fever,
120. Throat ailments,
121. Sciatica,
122. Necessity for new glasses,
123. Cramps,
124. Stomach erosions,
125. Hardening of the arteries,
126. Neuritis,
127. Dry Salivary glands,
128. Pain after drinking anything cold.
129. Stiff and short tendons,
130. White spots in palm of hands,
131. Catarrh of the throat,
132. Sub-normal digestion of fats, starches, and sweets,
133. Gastric Disturbances after eating sulphur food,
134. Catarrh of the lungs,

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| 135. Anemia, | 181. Weakness and tenderness of small
of back, |
| 136. Pallid complexion, | 182. Suffocation spells, |
| 137. Retarded growth, | 183. Poor eye sight, |
| 138. Paleness, | 184. Burning of the soles of the feet, |
| 139. Run down and weakened con-
dition, | 185. Coldness of lower limbs in cold
weather, |
| 140. Poor resistance, | 186. Swollen ankles, |
| 141. Palpitation of the heart, | 187. Fault finding, |
| 142. Perspiring and flushing on one
side, | 188. Oppressive respiration, |
| 143. Colds in the head, | 189. Partial deafness, |
| 144. Paling and flushing of the face, | 190. Only partial digestion of food, |
| 145. Murky yellowish gray face, | 191. Stinging headaches, |
| 146. Crying against will, | 192. Craving for rest and quiet, |
| 147. Peevishness, | 193. Sleeplessness at night, |
| 148. Whining, | 194. Murmur heard in heart, |
| 149. Disheartening, | 195. Anemic blood, |
| 150. Fatigue by reading, | 196. Acid blood, |
| 151. Fear of losing reasoning powers, | 197. Epilepsy, |
| 152. Alternating pain in the spleen and
kidneys, | 198. Cerebellum under tension, |
| 153. Craving for stimulants and indi-
gestibles, | 199. Poor equilibrium in the nerves of
of the finger tips, |
| 154. Fullness and dryness of the throat, | 200. Weakness of the muscles, |
| 155. Tender nostrils, | 201. Laborious thinking, |
| 156. Laxity of organs, | 202. Listlessness, |
| 157. Dry hacking cough, | 203. Looking into distance, |
| 158. Trembling of lower limbs, | 204. Ennui, |
| 159. Cold hands, | 205. Sighing, |
| 160. Itching, | 206. Getting into a groove, |
| 161. Pulsation in the finger tips, | 207. Lack of executive power, |
| 162. Painful lungs, | 208. Distrust, |
| 163. Rattling breath, | 209. Pessimism, |
| 164. Heavy chest with a blood taste in
the mouth, | 210. Weak will power, |
| 165. Tightness in the head, | 211. Weak courage, |
| 166. Constriction of heart muscles, | 212. Mental aggravations, |
| 167. Fog and film in front of eyes, | 213. Hemorrhages, |
| 168. Sore, hot, inflamed eyes, | 214. Trembling, |
| 169. Desire to carry arms above head, | 215. Soft bones, |
| 170. Pain in shoulder joints, | 216. Deformities, |
| 171. Tired nerves, | 217. Imperforations, |
| 172. Lively evenings and stupid morn-
ings, | 218. Displacements, |
| 173. Tearfulness, | 219. Closures, |
| 174. Hysteria, | 220. Alterations, |
| 175. Heavy pressure in stomach, | 221. Chilblains, |
| 176. Ability to see better in dark, | 222. Ugly scars, |
| 177. Tenderness in liver and abdomen, | 223. One limb shorter than the other, |
| 178. Lame arms, | 224. Cysts, |
| 179. Anemia, | 225. Facial paralysis, |
| 180. Need of bracing tonics, | 226. Tumefaction, |
| | 227. Decomposition of tissue, |
| | 228. Purulent formation, |
| | 229. Suppuration, |
| | 230. Lack of coagulability, |

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| 231. Incoherent speech, | 246. Tardy convalescence, |
| 232. Earthy complexion, | 247. Wounds not healing, |
| 233. Sluggish movement of the red corpuscles, | 248. Lameness of flexors, |
| 234. Sensitivity to moisture, | 249. Venous dilation, |
| 235. Involuntary, artificial breathing, | 250. Jelly-like bones, |
| 236. Afternoon headaches, | 251. Wax complexion, |
| 237. Dizziness in the open air, | 252. Negative mind, |
| 238. Sensitivity to atmospheric pressure, | 253. Slowness in movements and thoughts, |
| 239. Staggering upon arising, | 254. Underweight, |
| 240. Perspiration in the dark, | 255. Apoplexy, |
| 241. Heaviness of head, | 256. Chronic ailments, |
| 242. Early sleepiness, | 257. Sinus trouble, |
| 243. Icy sensations in the spine, | 258. Cystitis, |
| 244. Defective blood, | 259. Skin cancer, |
| 245. Slowness in walk, | 260. Ulcers, |

or that Dr. McLain's Vitamin Food is a competent treatment, or an effective remedy for any of the above conditions;

(b) By direct statement or by reasonable inference, that the ordinary diet consumed in this country does not contain sufficient amounts of Vitamins A, B, and E, or that—

1. A vitamin concentrate is necessary,
2. One cannot get the necessary vitamins from the ordinary diet,
3. That mastication and the digestive system of the ordinary individual does not break down the cellular envelopes so as to make the vitamins contained in food capable of being assimilated;

(c) That almost everyone who is ill is deficient in vitamins; or that by taking Dr. McLain's Vitamin Food such persons will soon feel stronger, or will be benefited, or

1. Are meeting the demands of nature, or
2. Are giving the body that which it demands;

(d) That Vitamin E is necessary for human beings, or is the vitamin most necessary to the proper functioning of the body;

(e) That Dr. McLain's Vitamin Food strengthens the digestive system, raises the blood pressure, increases circulation in the body, or will achieve all around improvement;

(f) That Dr. McLain's Vitamin Food is a substance demanded by nature;

(g) That Vitamin E plays an important role in the functioning of the thyroid, or that when there is a disturbance of this gland, it is due to a deficiency of Vitamin E in that person's body;

(h) That everyone, or almost everyone, who uses this product will find his health improved, feel stronger and better;

(i) That Vitamin B is a nerve builder, or that it contains a vitalizing substance for all nerve tissues;

(j) That lack of appetite is always due to indigestion;

(k) That Dr. McLain's Vitamin Food is a competent treatment or an effective remedy for such conditions in the digestive tract as result in "almost a complete stoppage of food";

(l) That the addition of Dr. McLain's Vitamin Food to the diet will constitute a competent treatment, or an effective remedy for improperly functioning glands;

(m) That any disease or pathological condition is necessarily a symptom of vitamin or mineral deficiency;

and from making any other claims or assertions of like import. (July 28, 1936.)

01460. Vendor-Advertisers—Fur Wearing Apparel.—Mandre, Inc., a corporation, Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman; and Mandri, Inc., and Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman, individually and trading under the name of M. Brooke & Co., Washington, D. C., vendor-advertisers, are engaged in selling fur coats, fur pieces, fur trimmed ladies' dresses and other garments and wearing apparel, and in advertising represented:

No. 1—Feb. 14, 1935

Imported

FRENCH SEAL

(dyed coney)

COATS \$79

The words "Imported French Seal Coats" are printed in large bold black type followed by the words "dyed coney" printed in 8 point italic type and placed in parentheses.

No. 2—Nov. 2nd and 15th, 1934

BROOKS' FUR SALE

\$59

including coats regularly sold for \$69 to \$99

KIDSKIN

BROADTAIL

LEOPARD CAT

MUSKRAT

CARACUL

BLOCKED LAPIN

OR SEALINE

(dyed coney)

Lapin is the French word for rabbit. Said capitalized words are printed in large bold black type, easily discernible, followed by the words "dyed coney" printed in small 12 point Roman lower case type set in parentheses.

No. 3—Nov. 9, 1934

HUDSON SEAL COATS

(Dyed Muskrat)

A. Hollander-dyed!

regularly, \$195

137.50

* * * * *
The words "Hudson Seal Coats" are printed in large bold black type followed by the words "dyed muskrat" printed in 8 point italic type set in parentheses.

No. 4—Jan. 18, 1935

Brooks Offers you

HUDSON SEAL

(Dyed Muskrat)

* * * * *

The words "Hudson Seal" are printed in large bold black type, easily discernible. The words "Dyed Muskrat" in parentheses following the words "Hudson Seal" are printed in 10 point italic type.

No. 5—Jan. 4, 1935

GRAY BROADTAIL BLACK KIDSKIN

RUSSIAN LEOPARD CAT

CARACUL SEALINE*

BLOCKED LAPIN* BEAVERETTE*

*Dyed coney

Said capitalized words are printed in large bold black type followed by the words "dyed coney" printed in 8 point italic type.

No. 6—Feb. 1, 1935

FUR COAT

SALE!

* * * * *

Regular \$89 to \$99 Values

(a) \$69
Imperial Seal (dyed coney)—one of the smartest and most popular furs. * * *

* * * * *

Regular \$79 Fur Coats

(b) \$59
This group includes Russian leopard cat, black and brown caracul, kidskin, muskrat, broadtail and sealine. (dyed coney). * * *

* * * * *

Regular \$59 to \$79 Coats

(c) \$49
Included in this group are: Sealine and beaverette (both dyed coney), Russian leopard cat, black and brown caracul.

* * * * *

Following the words "Russian Leopard cat, black and brown caracul" used to describe the skins or pelts from which the coats are made, as set out in (c) above, there are no qualifying words.

No. 7—Jan. 25, 1935

FUR SALE
IMPERIAL
SEAL* COATS
(dyed coney)

* * * * *
The words "Imperial Seal Coats" are printed in large bold black type, easily discernible, underneath which are printed in parentheses the words "dyed coney" in 8 point italic type.

No. 8—Sept. 16, 1934

Brooks September
Fur
Specials
a gorgeous
coat of fine
MARMINK
(mink-dyed marmot)
\$99

* * * * *
The word "Marmink" is printed in large bold black type followed by the words "mink-dyed marmot" in parentheses, printed in 12 point italic type.

No. 9—Nov. 18, 1934

Brooks' offers an
important
Fur Special
coats of
A. Hollander & Son's
blocked
NUBIAN
*SEAL
(DYED CONEY)
\$99

* * * * *
The words "Nubian Seal" are printed in large bold black type followed by the words "dyed coney" in parentheses in 8 point italic type.

No. 10—Feb. 14, 1935

SPECIAL AT BROOKS
Imported
FRENCH SEAL
(DYED CONEY)
COATS \$79

* * * * *
The words "French Seal Coats" are printed in large bold black type and underneath the word "Seal", printed in 8 point italic type enclosed in parentheses, are the words "dyed coney."

No. 11—Nov. 16, 1934

A repeat of a sell-out event * * * and with values still more extraordinary! Take the brown Chinese Caracul* swagger coat we've sketched * * * we can't begin to describe the soft, supple beauty of this coat! More of those fine Kidskins, Broadtails, Russian and Panther Cat that your friends grabbed up two weeks ago! * * *

After the words "Fur Sale" is a sketch of a lady wearing a fur coat. The words "Chinese Caracul", "Kidskin", "Broadtails," "Russian" and "Panther Cat" are printed in large bold black type, descriptive of the fur or skin from which the coats are made, and are not accompanied by any qualifying words.

The respondents hereby admit:

1. That coats described in an advertisement as "Imported French Seal" (dyed coney) were made in the United States of pelts that were stamped on the back "Dyed in France."

2. *Nubian Seal* is a trade name adopted and used by A. Hollander & Sons.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That garments or furs are imported from France, or elsewhere, unless such be the fact and if so a statement will be made in direct connection therewith indicating whether it is the garments or the furs that are so imported;

(b) That marmot is marmink or from using any other word indicating mink; except as permitted in paragraph (c);

That respondent also agrees to cease and desist from:

(c) Describing furs in any other way than by the use of the correct name of the fur as the last word of the description, and when any dye or blend is used simulating another fur the true name of the fur appearing as the last word of the description must be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur.

(d) Using the word "seal" alone or in connection, combination or conjunction with any other word or words to describe or designate dyed coney, unless the word "seal" is compounded with the word "dyed" and such compounded word is immediately followed by the word "coney", or "seal-dyed coney."

(e) Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed muskrat unless the word "seal" or the words "Hudson Seal" are compounded with the word "dyed" and such word or words so compounded are immediately followed by the word or words signifying or designating the true name of the fur, as "Seal-dyed muskrat" or "Hudson Seal-dyed muskrat."

(f) Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words (regardless of corporate name, trade name or trade-mark), except that the word "seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat or coney fur, as "seal-dyed muskrat" or "seal-dyed coney", and except that the words "Hudson Seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat fur, as "Hudson Seal-dyed muskrat."

(g) Using the word "Hudson" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed coney or rabbit fur.

(h) Representing that rabbit, coney or lapin is sealine or beaverette, or from using any other descriptive term either as a prefix, suffix or name not commonly used to indicate a rabbit fur dyed to imitate seal or beaver, and

(i) Using any geographical name to designate a fur or garment unless such fur or garment emanates from the place indicated by such geographical name. (July 27, 1936.)

01461. **Vendor-Advertiser—Pyorrhoea Remedy.**—Kathryn R. Sabatini, an individual doing business under the trade name of A. B. C. Laboratories, Richmond Hill, N. Y., vendor-advertiser, is engaged in selling an alleged remedy for pyorrhoea, designated Triple Formula A9, B17, and C54 and advertising represented:

Pyorrhoea. Sure relief. Quicker Action. Triple Formula-A9-B17-C54, does what no other method will do.

Despair no longer. Here is the very Triple Formula method used with success by Famous European dentist surgeons in thousands and thousands of cases. Now available in America.

No sufferer of Pyorrhoea and embarrassing Mouth Odor should be another day without the blessed relief and definite expectation of cure that Triple Formula A9-B17-C54 brings—and on an absolute guaranty bases.

Stop—Pyorrhoea Bad Breath Despair no longer. You can get complete relief from Pyorrhoea and other deadly mouth diseases, or no pay.

Triple Formula A9-B17-C54 is the product of many years of painstaking research and scientific experimentation. It is the last word on successful treatment of Pyorrhoea and Embarrassing Mouth Odors. Through its use thousands of hopeless sufferers have been relieved, their teeth saved and their health restored.

"Give TRIPLE FORMULA A9-B17-C54 a fair trial. It is Guaranteed to give you satisfaction—or your money will be refunded in full.

Forty percent of constitutional diseases and disabilities can be directly traced to the constant drainage of poisonous pyorrhoea pus from your gums into your system.

REMEMBER, Triple Formula A9-B17-C54 is the most effectual remedy for pyorrhoea and embarrassing mouth odors. It is sold to you on a positive money-back GUARANTEE. Its use is simple, painless, and amazing in its results.

Its quick medicinal action starts the moment it touches the unhealthy gums and teeth. It has a surprising stimulating effect on the gums, revitalizing them. It removes gradually the tartar that clings on the teeth, checking the principal cause of Pyorrhoea. It destroys impurities concealed in the mouth. It regains lost health, making life worth while living.

FORMULA A-9—Concentrated Liquid.

FORMULA B-17—Highly Antiseptic Wash.

FORMULA C54—Special Medicated Dentifrice—It is based upon an official preparation inserted in the U. S. National Formulary.

OUR GUARANTEE. If, after 15 days trial of the A-B-C Triple Formula Treatment, the sufferer of pyorrhoea is not satisfied with the results obtained, we agree to refund in full the money paid.

A-B-C LABORATORIES.

Our TRIPLE FORMULA actually heals pyorrhoea and eliminates embarrassing mouth odors.

Our Triple Formula Treatment strikes at the root of the trouble. It does not work immediately as a "shot", but gradually, every day showing definite improvement, reviving the gums and toning, strengthening and whitening the teeth, also ending any trace of embarrassing mouth odor.

The respondent hereby admits:

That Formula A9 is an astringent; Formula B17 is an alkaline wash not proven to be antiseptic; Formula C54 contains zinc chloride, the action of which is entirely different from the action of sodium perborate;

That, according to reliable scientific authority Triple Formula A9-B17-C54 is not a competent remedy in the treatment of pyorrhoea, but the successful treatment of such a condition requires measures which can only be carried out by persons technically trained by experience in handling such cases.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Triple Formula A9-B17-C54:

1. Gives sure relief or quicker action in cases of pyorrhoea;
2. Has been used with success by famous European dentist surgeons in "thousands and thousands" of cases;
3. Is on an "absolute guaranty bases";
4. Gives complete relief from pyorrhoea and other deadly mouth diseases;
5. Relieves suffering, saves teeth, restores health;
6. Is the most effectual remedy for pyorrhoea and embarrassing mouth odors;
7. Stimulates and revitalizes the gums;
8. Removes tartar from the teeth;
9. Checks the principal cause of pyorrhoea;
10. Destroys impurities concealed in the mouth;
11. Actually heals pyorrhoea;
12. Strikes at the root of the trouble; or
13. Tones, strengthens and whitens the teeth;

(b) That forty percent, or any other percentage, of constitutional diseases and disabilities can be directly traced to the constant drainage of poisonous pyorrhoea pus from the gums into the system unless and until such a statement is proven by authentic statistics;

(c) That Formula A-9 is a "concentrated liquid";

(d) That Formula B-17 is a "highly antiseptic wash";

(e) That Formula C-54 is a "special medicated dentrifice", based upon an official preparation inserted in the U. S. National Formulary; and from making any other claims or assertions of like import. (Aug. 3, 1936.)

01462. Vendor-Advertiser—Medicinal Preparation.—I. Paul, an individual trading as Russ Pharmaco Products, Philadelphia, Pa., vendor-advertiser, is engaged in selling a preparation designated Russlac, and in advertising represented:

Russlac, the stomach tonic that will keep you healthy and happy. Russlac will pep you up and aid the organs of the body in their natural work. It prevents simple headaches and aids digestion. Russlac is harmless and is beneficial for old and young. Build up your body resistance with Russlac and you will avoid many colds during the winter months.

Go to your nearest drug store and purchase a bottle of the famous "Russlac Tonic". After you have used this famous European discovery write a letter telling how much good it did you and enclose a portion of the Russlac carton. * * * First prize is \$50.00 for the writer of the best letter; with a second prize of \$5.00 for the next best.

If you suffer from nervous headaches, faulty elimination, backache or biliousness, try Russlac Tonic. Russlac is harmless.

If you suffer from pain and distress, if you are run-down physically and have "nerves", your condition must either improve or it will surely get worse. In RUSSLAC we offer you a wonderful health insurance. Why gamble with your health, why take any chances, when this wonderful remedy, which has been tried and tested, is recommended to you by thousands of folks who have used it, and who, today, would not be without it.

RUSSLAC, the newest discovery is health restoring, is made of carefully selected herbs, roots and other healing ingredients. It is absolutely free of all harmful and habit forming drugs. We can positively assure you that no harm, and only good can come from its use.

Relief from pain and discomfort comes quickly after beginning the use of RUSSLAC, and as strength is gained, Nature's healing process is aided; in a short time color returns to the face, eyes brighten, and the old time vigor returns: Perfect health is yours once again.

Hundreds of letters in our possession testify to the great work it has done in restoring health and strength.

RUSSLAC, a well recommended remedy for quick relief of disorders of the stomach, liver, kidneys, and specially suggested for obstinate and long standing cases of constipation, indigestion, headaches, gastritis, rheumatism, backache, stomach pains, run-down system, nervousness, auto-intoxication, and other ills due to improper functioning of the stomach, liver, and kidneys. Take it for health.

The respondent hereby admits:

That the efficacy of respondent's product in the treatment for the conditions for which it is represented, is limited to such relief as it may afford due to its properties as a laxative and diuretic, and as an appetite stimulant;

That the product is not a famous European discovery.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a stomach "tonic";

- (b) That said product will keep one healthy or "pep you up";
 - (c) That said product will prevent headaches;
 - (d) That said product will "build up" body resistance;
 - (e) Inferentially or otherwise that said product will prevent colds, or that by its use colds will be avoided;
 - (f) That said product is a "famous European discovery";
 - (g) That said product is a competent treatment or an effective remedy for headaches, faulty elimination, backache, biliousness, nervous trouble, constipation, indigestion, gastritis, rheumatism, stomach troubles, run-down system, auto-intoxication, unless confined to relief of the distress caused by such conditions;
 - (h) That said product has any effect on the proper functioning of the stomach, liver or kidneys;
 - (i) That the product is an insurance of health or that by its use one will have perfect health;
 - (j) That said product will restore health or strength;
- and from making any other claims or assertions of like import. (Aug. 13, 1936.)

01463. Vendor-Advertiser—Correspondence Course.—S. J. Mullica, an individual operating under the trade names of the International Detective System and the International Detective Training School, Jersey City, N. J., vendor-advertiser, is engaged in selling a correspondence course in detective instruction, and in advertising represented:

* * * COMPLETE International Detective System Training Course
* * *

If by reason of financial losses, sickness, or inability to understand the lessons, the student is actually unable to complete the course, further payment for the full amount will not be demanded. If the student has already paid the full amount, we will refund the proportionate part of the money that he has paid, less a fair percentage for overhead.

Financial Institutions, Steamship Lines, Insurance Companies, Telegraph and Telephone Concerns, Airports, Railroads, Department Stores, Hotels and hundreds of additional responsible corporations including City, State and Federal Government Bureaus have openings for Detectives, Trailers and Spotters of good character and ability. The positions open for such TRAINED, CAPABLE and EFFICIENT DETECTIVES, are profitable, permanent and pleasant.

Conditions throughout the country just now are such that the demands for detectives are greater than ever before. All indications are that this demand will be still greater as the months pass by. That will mean an immediate demand for Trained Detectives. Where will all the Trained Detectives come from?

ACT NOW, TODAY. REMEMBER YOU CANNOT FAIL.

BADGE AND FINGER PRINT REWARD FREE. Upon completion of the course, you will receive the Elementary Instructions on finger printing showing how finger prints are taken and prepared, will be sent you free, without any charge, together with a gold plated BADGE or EMBLEM you may wear in your coat lapel designating your instruction to Citizens, Chiefs of Police, Chiefs of Detectives, Sheriffs, Marshals, Heads of Corporations, etc., etc., thereby receiving the usual courtesy shown Graduate Detectives of THE INTERNATIONAL DETECTIVE SYSTEM.

When you have received the full course of our seventeen (17) separate and distinct lessons, you will then have all the required training demanded by the heads of the various State and City Governments, Steamship Lines, Railroads, Airway Transportation Companies, Hotels, Department Stores and all other business corporations.

Whether you are a resident in or near our INTERNATIONAL DETECTIVE SYSTEM SCHOOL OF CORRESPONDENCE, or in far off states and continental territories, you will receive the exact lessons in this valuable Detective work as though you were with us in person.

Nothing is omitted. Training is complete. There is no possible chance for you to lose. I emphasize this feature because I want you to feel that you are absolutely protected. The Detective Profession needs you.

This is the only detective school in the world, as far as we know, that gives you a practical Detective and Secret Service course, and without extra charge, your Diploma and Graduation badge.

You want to be fitted for work that pays BIG—you wish to graduate as soon as possible into the ranks of the 2500, to \$7500 a year men—then enroll with us where you will be taught the things that men know who are capable of earning BIG MONEY.

Start today. These terms are open to you for immediate acceptance. The tuition may be increased at any time.

BECOME DETECTIVES—SECRET SERVICE—EASY METHOD trains you—for—duty—short time by former United States Government Officer. Big Money—Home—Travel—Experience Unnecessary. Particulars FREE. Write INTERNATIONAL DETECTIVE SYSTEM.

The shortest Way to FINANCIAL SUCCESS.

The International Detective System.

A superior Detective Course of real value offers you the only complete Secret Service training of its kind known to the scientific knowledge.

The big fees, pay or salary of a Detective is not affected by bad weather or hard times.

The Individual Detective Instructors of the INTERNATIONAL DETECTIVE SYSTEM will answer these NOT EASY TO KNOW OFF-HAND QUESTIONS in specific comprehensive language, easily understood by our students as if same were taught in person.

Each pupil is trained and instructed individually by our staff of Secret Service Detectives.

On this assumption, therefore, we have prepared such a course of training as will equip our students with a complete knowledge of the Detective profession.

We teach you by easy stages ALL BRANCHES of this fascinating and interesting paying profession, and qualify you for the particular branch to which you show the most aptitude whether it be private or Governmental work.

The demand for efficient Detectives in this line of professional endeavor is becoming greater every year and we feel that course will qualify you to be such a Detective, in the particular branch you find best fitted for.

The respondent hereby admits:

That a short course such as that offered by respondent cannot equip a student with a complete knowledge of the detective profession;

That the "overhead" in connection with this course does not constitute 66 $\frac{2}{3}$ % of the price charged;

That the demand for detectives does not at the present time exceed the supply;

That the cost of the badge and finger print instruction, advertised as "free", is included in the price charged for the course;

That instruction, given by personal contact is universally acknowledged to be superior to similar instruction by correspondence;

That not all graduates of this school are earning more than \$2,500 per year, nor are any of them earning \$7,500 per year;

That prices quoted as open for "immediate acceptance" have not been withdrawn;

That this school is unable to furnish the training necessary for employment by the Secret Service of the U. S. Government;

That there are courses of instruction similar to this offered by other schools;

That the instructors of this school are not "Secret Service Detectives."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the instruction offered constitutes a "complete training course" in detective instruction, or that the course supplies all of the required training demanded by all employers of detectives; or that—

1. Nothing is omitted.
2. Training is complete.
3. Students are equipped with a complete knowledge of the detective profession.
4. One is taught all branches of the profession, and is qualified for every branch;

(b) That 66% of the price of this course is a "fair percentage for overhead";

(c) That any institutions have "openings" for employees unless such institutions do in fact have vacant positions, and which graduates of this course are qualified to fill;

(d) That there is at this time a "demand" for detectives, or that such "demand" will increase "as the months go by", or that any person is "needed" by the detective profession;

(e) That one cannot fail to be successful if he takes this course;

(f) That anything is given "free" when in fact the cost thereof is included in the price charged for the course of instruction;

(g) That graduates of this course are accorded special courtesy or consideration by regular peace officers;

(h) That the lessons comprising this course constitute training as effective "as though you were with us in person", or as easily understood as if they were taught by personal contact, or otherwise representing that it is equivalent to a resident course;

(i) That graduates of this course may expect to earn from \$2,500 to \$7,500 per annum, unless and until such graduates are placed in positions paying salaries within that range;

(j) That any price quoted is for "immediate acceptance", unless a definite time limit is set after which acceptance of the offer is refused;

(k) That this course will train one for entrance into the service of the Secret Service of the U. S. Department of the Treasury;

(l) That the taking of this course is the shortest way to financial success;

(m) That this course is the only complete training of its kind known to the scientific knowledge;

(n) That the employment, including the salary, of a detective is not affected by "hard times";

(o) That this respondent employs a staff of Secret Service Detectives;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from the use of the trade name "International Detective System", unless in direct connection therewith there appears a statement explaining that this is only a training school for detectives. (Aug. 4, 1936.)

01464. Vendor-Advertiser—Ladies' Fur Coats.—William Rosendorf, an individual, Washington, D. C. vendor-advertiser, is engaged in selling ladies' fur coats, and in advertising represented:

LADIES' FUR COATS

"Beverette"

The respondent hereby admits:

That his fur coats advertised as Beverette are not made from the fur of the beaver, but are made from coney dyed to resemble or simulate beaver.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

Describing the furs from which respondent's coats are made in any other way than by the use of the correct name of the fur as the last name of the description and respondent agrees that when any dye or blend is used simulating another fur the true name of the fur appearing as the last name of the description will be immediately preceded by the word dyed or blended compounded with the name of the simulated fur;

and from making any other claims or assertions of like import. (Aug. 4, 1936.)

01465. Vendor-Advertiser—Reducing Plan and Tablets.—C. L. Wendt, Canton, S. Dak., vendor advertiser, is engaged in selling a plan of weight reduction consisting of the advocated use of various laxative tablets, the following of a flat rate type of diet and list of exercises, and in advertising represented:

The tablets * * * help reduce blood pressure, * * * produce freer elimination from the kidneys.

By using my Diet List and Tablets as advised, you will be able to reduce your weight to normal.

Diarrhea * * * It is healing and pain and indigestion are wonderfully relieved.

Halitosis is most prevalent with those who are overweight * * * overweight subjects are appallingly prone to certain diseases—Nephritis and Diabetes claim four times as many victims in the over-weight as in normal individuals. The chances of death from cerebral hemorrhage rise from 70 to 235% in overweight people. Liver and gall bladder diseases are common in the fat and flabby. * * * normal weight will mean greater vigor, pep and efficiency. The trifling cost * * * involved in reducing weight to normal will pay handsome cash dividends to each overweight man. * * * the average loss is from six to ten pounds in one week * * * the tablets used in connection with my diet * * * accelerate liver elimination, stimulate the bile duct to efficient activity.

The writer has developed a new laxative, * * * It is healing and pain, indigestion and constipation are wonderfully relieved. When you are through reducing, it is suggested that you send one dollar for a generous supply of this new laxative. It will help you to keep your weight down and end constipation.

The respondent hereby admits:

Such effect as respondent's plans may have in the reduction of weight is due to the observance of a flat rate type of diet which respondent advocates to be followed as a part of the plan, and according to the weight of scientific authority, the matter of diet should be adapted to the individual needs of each person.

The tablets are merely laxative in their therapeutic effect.

No evidence has been furnished to substantiate respondent's statements relative to the percentage of cases of certain conditions due to overweight or common to persons of an over-weight condition.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's tablets have any beneficial effect in reducing blood pressure or in causing elimination of the kidneys;

(b) That use of respondent's plan will enable one to reduce to normal weight;

(c) That use of respondent's plan will enable one to reduce any definite number of pounds within any definite period of time;

(d) That respondent's tablets will stimulate the liver or the bile duct;

- (e) That respondent's tablets will "end" constipation;
- (f) That respondent's tablets are competent in the treatment of indigestion;
- (g) That respondent's tablets are healing unless limited to such aid as they may afford in the healing of the conditions of the stomach or intestines;
- (h) Directly or otherwise that any disease or ailment is more prevalent among over-weight persons than among persons of normal weight unless substantiated by reliable statistical evidence;
- (i) That the probability of death of an overweight person, as compared with a person of normal weight, is greater by any ratio or percentage than can be substantiated by reliable statistical evidence; and from making any other claims or assertions of like import. (Aug. 6, 1936.)

01466. **Vendor-Advertiser—Breath Tablets.**—Henrietta K. Moore and George L. Moore, copartners, operating under the firm name of Breth Kontrol Tablet Co., Los Angeles, Calif., vendor-advertisers, is engaged in selling Breth Kontrol Tablets, and in advertising represented:

The Associated Brands product, Breth Kontrol Tablets, were primarily for the elimination of offensive breath odors caused by the use of alcoholic beverages. The fact remains that they will absolutely remove immediately and indefinitely all forms of offensive breath odors, regardless of their cause.

Breth Kontrol Tablets are a scientifically compounded tablet containing ingredients which absorb and eliminate all forms of offensive breath odors instantly.

Breth Kontrol Tablets quickly eliminate all offensive breath odors when used as directed.

The respondents hereby admit:

That feter oris (bad breath) is frequently due to causes remote from the oral cavity and in such conditions respondents' product would have no effect in overcoming the conditions; its therapeutic effect being limited to such slight and temporary benefit as it may afford in cases due to local conditions of the oral cavity.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That said product will remove all forms of breath odors regardless of the cause of such odors; and from making any other claims or assertions of like import. (Aug. 10, 1936.)

01467. **Vendor-Advertiser—Lamps.**—Mantle Lamps Co. of America, Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling Aladdin Lamps, and in advertising represented:

You can operate an Aladdin Lamp, which gives 10 times the light of that old one, on less oil than it takes to operate that old *red flame* lamp.

Aladdin light is more like daylight than any other light.

Aladdin light is white—the nearest approach to daylight of all artificial lighting devices.

The Aladdin light is a perfect light.

The World's finest light.

Nothing to get out of order.

An Aladdin lamp doesn't cost you a penny . . . You only deposit the cost of it—that's all.

The respondent hereby admits:

That scientific tests have shown that the Aladdin Lamp does not give ten times the light of the old luminous flame lamp on less oil than it takes to operate the old lamp;

That the Aladdin Lamp is not "nearest to sunlight of any light known", or "the nearest approach to daylight of all artificial lighting devices", or "a perfect light", or "the world's finest light";

That it would be unnecessary and unprofitable to advertise for sale "fixtures, replacements and repairs" for any machine or device that had "nothing to get out of order";

That the Aladdin Lamp cannot be bought without the expenditure of money, or other thing of value.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise

(a) That Aladdin Lamp—

1. Gives ten times the light of the old luminous flame lamp on less oil than it takes to operate the old lamp;
2. Is a perfect light;
3. Is the world's finest light;
4. Doesn't cost you a penny;
5. Is nearest to sunlight of any light known; or
6. Is the nearest approach to daylight of all artificial lighting devices;

(b) That there is nothing to get out of order so long as fixtures, replacements and repairs are advertised for sale and kept in stock; and from making any other claims or assertions of like import.

Nothing herein shall prevent respondent from making a representation by comparison concerning its lamp that can be and is supported by competent evidence of a practical and competent demonstration or experiment. (Aug. 7, 1936.)

01468. Vendor-Advertiser—Canaries.—D. Crimmins, Woodside, Long Island, N. Y., vendor-advertiser, is engaged in selling canaries and a booklet entitled "\$500 A Year Raising Canaries," and in advertising represented:

CANARIES * * * are easily taught to sing and a good singer brings from \$5 to as high as \$20.

You can investigate this matter further by simply sending a dollar for a book telling you how (which book is known as "\$500 a year raising canaries"), our sales-contracts, agreeing to buy back at certain set prices and in certain set quantities the birds you raise, and complete information relative to making a start.

FIVE HUNDRED DOLLARS A YEAR * * * is a sizeable amount for working a few minutes a day * * * the book will show you how to gain just that.

On account of a number of young birds each pair will raise each year (average 24 young per year, per pair) * * * we know of nothing that offers the profit possibilities as canaries.

* * * There is not one penny of expense except for the small original investment.

"\$500 a year raising canaries" is the work of Mr. J. E. Yarnall of Altoona, Pa. * * * an old experienced breeder of canaries.

Read the contents of this valuable work * * * diseases, remedies of the canary. Apoplexy, Asthma, Inflammation of the Bowels, Fits, Loss of Voice, Parasites, Constipation, broken limbs, claws and beak overgrown, cure for all the above.

If you take advantage of only the smallest investment, that of purchasing one pair of "Pure-Bred" breeders, you will get at least two dollars for every one you give out, and as much as thirty dollars. We practically guarantee you such a sum. A look at the contract will give the full facts.

If you should take the fullest advantage, that of ten pairs of birds, you can positively count on three hundred dollars; and you may get as much as five thousand dollars.

Our plan for raising canaries. * * * Offers you at a minimum of time and labor a starting income of up to five hundred dollars.

You are guaranteed a market. We need thousands of birds; they must be supplied by breeders like yourself. As stated in the contract and the circular, up to five hundred dollars (\$500), but at least thirty dollars (\$30) which is twice the cost of the breeders, worth of birds, depending entirely on how closely you follow our instruction manual, will be bought back from the stock raised from our breeders. * * * This service is the only one of its kind.

The respondent hereby admits:

That the maximum prices represented as being paid for canaries are not the usual market prices, but represent sums which may be paid for show winning birds sold for tutoring purposes;

That respondent's contract does not contain an agreement to purchase canaries from respondent's customers at certain set prices or in certain set quantities;

That the average number of young birds raised by one pair of breeder birds under normal conditions does not represent the number stated in respondent's advertising;

That the original investment is not the only expenditure involved in the breeding and sale of canaries;

He has furnished no evidence that the author of the book sold by him is an experienced breeder of canaries;

That the products manufactured from the formulæ published in the book sold by respondent remedies or cures for the conditions for which they are represented;

That there are others who purchase birds from those to whom breeder birds are sold;

That he has furnished no evidence that purchasers of canaries sold by him have earned the amounts represented or that the average earnings represents such sums. Neither does respondent guarantee such earnings nor does he guarantee a market.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise that the market price for canaries is any amount in excess of that for which canaries are sold for regular purposes under normal conditions;

(b) That respondent's contracts contain an agreement to purchase canaries at certain set prices or in certain set quantities unless and until such is a fact;

(c) That the original expense is the only expense involved in the breeding and sale of canaries;

(d) That the author of any book on canaries sold by respondent is an experienced breeder of canaries unless established by factual evidence;

(e) That the formulae contained in the books sold by respondent are remedies for or will cure Apoplexy Asthma, Inflammation of the Bowels, Fits, Loss of Voice, Parasites, Constipation;

(f) That respondent guarantees earnings of any amount to those who purchase canaries from him;

(g) That respondent guarantees a market to those who purchase canaries from him;

(h) That respondent's "service" is the only one kind of its kind; and from making any other claims or assertions of like import.

The respondent further stipulates and agrees:

(i) Not to represent as the average number of young birds raised per pair per year any number in excess of that raised per pair per year under normal conditions;

(j) Not to make unmodified representations or claims of earnings in excess of the average earnings of purchasers or respondent's breeder canaries achieved under normal conditions in the due course of business;

(k) 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 purchasers of respondent's breeder canaries, under normal conditions in the due course of business;

(l) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expres-

sion any amount in excess of what has actually been accomplished by one or more purchasers of respondent's breeder canaries, under normal conditions in the due course of business;

(m) 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 or representation of earnings. (Aug. 7, 1936.)

01469. **Vendor-Advertiser—Washing Fluid.**—Sinclair Manufacturing Co., a corporation, Toledo, Ohio, vendor-advertiser, is engaged in selling a washing fluid designated "Sunrae", and in advertising represented:

KILLS ODOR, GERMS, AND HELPS HEAL SCRATCHES.

SUNRAE is concentrated.

FOR TIRED OR SWOLLEN FEET.

HELPS HEAL ABRASIONS, BENEFICIAL IN TREATMENT OF ATHLETE'S FOOT.

Cuts and Scratches—Commonly used as a germicide in hospitals. For cuts and scratches, to promote quick healing without infection, use one part of SUNRAE to three parts of water and apply to open cut. Do not apply to bandage.

The respondent hereby admits:

That, according to scientific opinion, the principal ingredient in this product is an oxidizing agent, and has value in removing stains, in bleaching clothes, in destroying certain odors, and when properly used, in disinfecting; but it will not destroy all odors, and it will not kill all germs including their spores, unless used in sufficient concentration;

That Sunrae is not, accurately speaking, a concentrated solution of sodium hypochlorite;

That Sunrae is not a competent treatment or an effective remedy for all conditions responsible for swollen feet;

That according to the weight of scientific opinion, this product is not an effective remedy for athlete's foot except where the germ or fungus can be reached by the solution;

That the use of Sunrae in hospitals is not sufficiently extensive to justify the claim that it is "commonly" so used.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sunrae kills all germs including their spores;

(b) That Sunrae is concentrated;

(c) That Sunrae helps heal scratches, cuts and/or abrasions, unless expressly limited to its effect as an antiseptic;

(d) By inference or direct statement that this product is effective

in the treatment of the condition commonly known as Athlete's Foot except where the germ or fungus can be reached by the solution;

(e) That Sunrae is a competent treatment or an effective remedy for swollen feet;

(f) That Sunrae is commonly used in hospitals;

and from making any other statements claims or representations of like import. (Aug. 11, 1936.)

01470. **Vendor-Advertiser—Dairy Products.—Challenge Cream and Butter Association, a corporation, Los Angeles, Calif., vendor-advertiser, is engaged in selling certain dairy products, and in advertising represented:**

Butter is the best known resister of disease. Butter contains the vital food elements so necessary to human growth. Vitamin "D" in butter is a preventive for rickets as well as being the Vitamin that builds bone, muscle and strong healthy teeth.

Head and throat infections—colds, sinus and mastoids—are often due to a lack of Vitamin A in our food. Health authorities list butter high among the protective foods for it is very rich in Vitamin "A".

Challenge Sweet Cream Butter . . . gives your body the vitamins so necessary to building a sound body and alert mind.

Protect your flock against coccidiosis with CHALLENGE DRY SKIM MILK. Here's a vital ingredient to mix in your feeding rations that will build health and vitality in your flocks and protect them against coccidiosis.

For over 23 years "Challenge" has brought the dairymen's produce direct to grocers, with an absolute elimination of middlemen and powerful speculators. Every penny of the consumer's dollar spent for Challenge Dairy Products—less a small selling cost and the grocer's legitimate profit—reverts back to the producer's pocket . . .

Challenge milk is rich in important vitamins.

Scientists have long agreed that youth needs a quart of milk a day and a pint for adults; youth needs it to build strong, healthy bodies, strong bones and keen, alert minds; adults need it to maintain the strength and vigor of youth.

Buttermilk has been called the "Food that lengthens life."

Challenge milk * * * provides more energy than found in meat, eggs, or fish to be purchased for the same amount of money.

The respondent hereby admits that according to the weight of scientific authority:

Butter is not the best known resister of disease;

Butter does not contain all of the vital food elements or necessary vitamins;

The vitamin D content of butter is not sufficient to prevent rickets or to build bone, muscle or teeth;

The majority of cases of head and throat infections, colds, sinus and mastoid can not be attributed to a deficiency of vitamin A nor has it been established that the ingestion of large quantities of vitamin A will prevent these infections;

While dry skim milk when added to the rations for chickens has some value in the control of coccidiosis the addition of milk food products cannot be depended upon to control outbreaks of coccidiosis;

Milk food products cannot be depended upon to build resistance to all forms of diseases, to build health and vitality in chickens, to promote vigor and stamina in breeding stock or to provide adequate growth for or to control the health of baby chicks;

Scientists have not agreed that adults need a pint of milk per day or that youths need a quart a day;

Buttermilk does not lengthen life;

The energy content of milk is not greater than meat, eggs or fish;

The respondent further admits that all the dairy products distributed by it are not sold exclusively to retail grocers; that it is the practice of respondent to dispose of surplus quantities of its products to wholesale dealers when such action is necessary to stabilize market conditions, and that the middlemen's profits are not eliminated on such part of such products so sold.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That butter is the best known resister of disease;

(b) That butter contains all of the elements necessary to human growth;

(c) That butter will provide Vitamin A in quantities sufficient to afford protection from head and throat infections, sinus or mastoids;

(d) That butter will provide vitamin D in quantities sufficient to prevent rickets or to build bone, muscle or teeth;

(e) Inferentially or otherwise, that butter contains a substantial amount of Vitamin D;

(f) That Challenge Sweet Cream Butter provides all of the vitamins necessary to building a sound body and an alert mind;

(g) That any certain amount of milk is essential to the daily diet, or that milk is necessary to the diet of adults to maintain strength and vigor;

(h) That Challenge Dry Skim Milk will afford complete protection from coccidiosis;

(i) Inferentially or otherwise, that Challenge Dry Skim Milk will prevent coccidiosis;

(j) That Challenge Dry Skim Milk will build health or vitality in chickens;

(k) That Challenge Dry Skim Milk will build resistance to all forms of diseases in chickens or promote vigor and stamina in breeding stock;

(l) That the product will provide adequate growth for baby chickens or control their health;

(m) That buttermilk "lengthens" life;

(n) That the energy content of any amount of Challenge Milk is in excess of the energy content of any amount of any other food product to be purchased at the same price unless substantiated by reliable scientific evidence;

(o) That all of respondent's dairy products are distributed exclusively through retail grocers; that the middlemen's profits are eliminated on such part of its said products as may not be distributed direct to the retail trade; or that all money spent by the consumers for such products [which] are so distributed, except the grocers' profits and respondent's selling cost, reverts to the producer;

and from making any other claims or assertions of like import. (Aug. 11, 1936.)

01471. Vendor-Advertisers—Medicinal Preparation.—S. D. Cates and Juel Denn (Mrs. S. D. Cates) copartners, operating under the firm name of The Buel Co., Chicago, Ill., vendor-advertisers, are engaged in selling a certain medicinal preparation designated Buel Medicated Hair Drill, and in advertising represented:

You want to be rid of your faulty hair growth. You do want a healthy scalp and normal growth of hair again.

* * * only as you decide to accept this MEDICATED HAIR DRILL TREATMENT and then Re-condition your faulty scalp condition can normal growth of hair be accomplished—and in that way only—with the Medicated Hair Drill procedure of Hair Culture, can you hope to *escape the clutches of ultimate baldness.*

Make up your mind right now—this very minute—while there is still hope, to adopt this Scientific, Amazing, result-bringing method to promote hair health that will insure normal growth of strong, live hair—a much needed possession.

The idea, then, is to bring healthy blood circulation to the scalps that need it, and this need is unmistakably indicated by a lack of hair, constant loss of hair, dandruff and similar symptoms of a disordered hair growth.

The MEDICATED HAIR DRILL, is what your doctor would advise if he were to recommend an ethical, dependable, effective Re-Conditioning hair treatment for better, stronger hair growth.

It gives positive assurance against ultimate baldness that is surely, stealthily creeping upon you, plainly visible, plainly showing through to a shining bald spot, or the margin line raised higher and higher from your forehead.

Dandruff—Scales—Itching Scalp—Thinning Out of Hair—Is Not The Beginning of Baldness
But the END!

After the reconditioning of the scalp and hair has done its good work, continue applying the hair medicine with the aid of the Drill for 30 to 40 days, in which time you will see new hair begin to grow.

BUEL has given thousands better and stronger hair growth.

Your hair need not thin out, nor need you become bald—for there is a way to destroy the microbe that destroys the hair—and again bring to the very crown of your head, a natural blood circulation carrying hair building and strengthening nourishment for normal, beautiful hair growth. The BUEL Hair Medicine will stop thinning out of the hair, lifeless hair, remove dandruff and itching scalp, and prevent threatened and increasing baldness. The BUEL

HAIR DRILL will strengthen and prolong the life of the hair for both men and women.

I can recommend the **BUEL Reconditioning Hair Grower Treatment** as superior to anything yet offered or devised for improving hair growth, toning up and cleansing the scalp from all its germ invasions, and its method for creating nourishing circulation to the hair roots. I earnestly recommend the **BUEL Medicated Hair Drill** to every man and woman that is losing his or her hair to the extent that they have reason to feel oncoming baldness. I know its value, its true worth, its undoubted merit, and I firmly believe that those that read my message and are influenced thereby to purchase **BUEL**, will have occasion to rejoice at the satisfactory results they will obtain.

Probably all you will ever need, is this one full treatment to bring your faulty hair condition around to normal action.

You can never get rid of the dandruff and thinning out of your hair until you recondition the scalp and force circulation to the roots, bulbs and follicles—bringing the nourishment that hair thrives on. This the **BUEL Medicated Hair Drill** will do for your hair.

If you have any hair left at all, your first thought should be to save what you have. This can surely be done by the **BUEL Reconditioning Method**.

Absolutely correct and simple in its application, nothing could be more direct in attacking scalp germ invasion, cleansing and invigorating and strengthening hair growth. There is no reason why you should let baldness come true.

In the **MEDICATED HAIR DRILL** is the remedy for hair trouble. Its use brings about a healthy scalp and hair condition. It makes the scalp tissues strong and firm and gives new life and energy to the hair roots, which make strong, healthy, attractive hair.

Two years ago I had the "flu" and the mumps together. My fever was 103 for several days. When I recovered, my hair began to fall out. I have tried several remedies during these two years but found them no good for me. I saw your advertisement in the *Pathfinder*—answered it and have been using your medicine and following the **Drill**, and have found it more good than anything I have ever tried. It has stopped the hair from falling out and has started a new coat of hair in the thin places.

REMEMBER, this offer is for your immediate acceptance. Don't expect me to hold it open many days.

Try **This On Your Hair 15 days**—Let your mirror prove results. Your hair need not thin out, nor need you become bald. This Different Method stops thinning out of hair, itching, dandruff, threatened or increasing baldness by strengthening, prolonging the life of hair for men and women. Send your name now before it's too late for free 15-day test offer.

The respondents hereby admit:

That **Buel Medicated Hair Drill** cannot be depended upon to grow hair, prevent baldness, promote the growth of hair or cure scalp disorders;

That **Buel Medicated Hair Drill** is not an effective treatment for the underlying causes of dandruff.

That "Special Offers", mentioned in the advertising as being limited as to the time for acceptance, have not been withdrawn, nor has any definite date been set for such withdrawal.

That no preparation can give new life or energy to the hair roots.

That the **Buel Medicated Hair Drill** is not a germicide.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By direct statement or reasonable implication that the Buel Medicated Hair Drill will grow hair, or will—

1. Enable one to regain a normal hair growth,
2. Quicken "hair growth correction" or promote the growth of hair, unless such representations are qualified to indicate that there are some cases where such results are not possible,
3. "Rid" one of faulty hair growth,
4. Bring one the "results desired",
5. Enable one to hold his appearance of youthfulness indefinitely.
6. "Save" one's hair, "surely" or otherwise,
7. Insure normal growth of strong, live hair,
8. Prevent the loss of hair,
9. "Correct" faulty conditions responsible for hair loss,
10. Constitute a competent treatment or effective remedy for conditions responsible for a scalp which is too oily,
11. "Stop" loss of hair,
12. Do "permanent good",
13. Constitute "the remedy for hair trouble",
14. Make the scalp tissues strong and firm,
15. Give new life and energy to the hair roots, or
16. Get rid of the cause of falling hair;

(b) That Buel Medicated Hair Drill will prevent baldness, or

1. Enable one to escape the clutches of ultimate baldness,
2. End baldness worries,
3. Give positive assurance against baldness,
4. Rid one of baldishness, or
5. Stop threatened or increasing baldness;

(c) That a lack of circulation in the scalp is the cause of dandruff;

(d) That dandruff, scaly or itching scalp is the cause of baldness;

(e) That Buel Medicated Hair Drill is a competent treatment or effective remedy for dandruff, or

1. Will get "rid" of dandruff,
2. Will remove dandruff and itching scalp,
3. That by its use one will have "no more" horrid, shameful, dandruff scalp,
4. Will drive away dandruff and itching scalp, or
5. Will "stop" itching or dandruff;

(f) That dandruff will cause the hair to break, split and fall out and leave the head bald;

(g) That falling hair, dull, lifeless, brittle, faded hair is due to germ infected hair follicles;

(h) That Buel Medicated Hair Drill will cleanse the scalp from all its germ invasions, or attack scalp germ invasions;

(i) That "the Hair Germ" is either the cause or result of baldness;

(j) That Buel Medicated Hair Drill gives new life or energy to the hair roots, unless limited to the increase in blood circulation caused by massaging or by the counter irritant properties of the preparation;

(k) That any offer is for immediate acceptance or will be held open only a few days unless a definite time limit is set after which acceptances of such offer are refused;

(l) That dead and loose hair prevent new hair from growing in;

(m) That this preparation will "recondition" one's scalp in 15 days or at all;

(n) That this product will create a better blood circulation or overcome sluggish blood circulation;

and from making any other claims or assertions of like import. (Aug. 11, 1936.)

01472. Vendor-Advertiser—Correspondence Courses.—Richie Joseph Tucker, an individual, operating under the trade name of National Detective Bureau, San Antonio, Tex., vendor-advertiser, is engaged in selling correspondence instruction in Private Investigation and Membership in "National Detective Bureau".

Richie Joseph Tucker, D. M.

Principal

W. G. Duncan, Chief-of-Staff

E. B. Chambers, Chief Counsel

Legal Department

National Detective Bureau

(The above taken from letterhead)

Kindly enroll me as a student of your complete course in Private Investigation.

* * * you may attend to any work authorized by this office.

* * * at any time that we have work in your vicinity, you will be notified and paid for any work authorized by this office.

* * * we have arranged in pamphlet forms, comprising a complete course in Detective work, the rules we expect our Associate Detectives to follow.

You will also receive a *Summary* of the above, your *Certificate of Proficiency* (suitable for framing).

The fee does not spell much profit to us but it enables us to have trained associates in various parts of the country to help us as cases may come up.

Men and women, experience unnecessary. If you are interested in detective work, join NATIONAL DETECTIVE BUREAU; become ASSOCIATE DETECTIVE. Basic principles of crime detection sent FREE to members.

DETECTIVES WANTED; Experience unnecessary.

* * * completed, with honor, the National Detective Bureau Full Course

in Private Investigation, has been duly graduated and awarded this Certificate of Proficiency in Private Investigation.

The respondent hereby admits:

That instruction furnished "members" is contained in the pamphlet "Qualities, Qualifications and Functions of a Private Detective", such information not constituting a complete course of instruction in this field;

That this advertiser does not employ a "Chief of Staff", or maintain a "Legal Department";

That the advertiser does not have work to forward to "members" throughout this country and abroad, and that detectives are not "wanted" by the advertiser in the sense that he has employment to offer;

That no instruction is furnished an applicant until he has paid his fee as a member, and that the cost of all materials then furnished is included in the enrollment fee;

That the activities of this Bureau are confined to the sale of "memberships", including the instructions.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any individual employed by this advertiser performs the duties of or holds the position of:

1. "Chief-of-Staff",
2. "Chief Counsel Legal Department";

(b) That the respondent sells a "complete course" in private investigation;

(c) By direct statement or by reasonable implication that the respondent has detective work to be performed by the "members" of his "bureau";

(d) That the reason for selling the course is to secure the help of trained associates throughout the country, and not for profit;

(e) That anything is furnished "free", as long as the cost thereof is included in the fee charged for "enrollment";

(f) That anyone is "wanted" as a detective by the respondent; and from making any other claims or assertions of like import.

The respondent further stipulates and agrees that he will cease and desist from the use of the words "National" and "Bureau" as a part of the trade name unless and until active operations of such organization warrant such terminology. (Aug. 11, 1936.)

01473. Vendor-Advertiser—Hosiery.—Philip Adler, Jr., an individual operating under the trade name of American Silk Hosiery Mills, Indianapolis, Ind., vendor-advertiser, is engaged in selling a certain product designated Snag-Proofed Hosiery and in advertising represented:

Want 500 women to demonstrate snag-proofed hosiery;

Get your own silk hosiery free of cost.

Demonstrate from actual samples to friends and neighbors and earn fine income.

They are made of 100% pure silk of very highest quality.

You deal direct with the mill. Besides eliminating the wholesaler's and other middlemen's expense, you pay for none of the costly steps of retail selling such as high rents, newspaper advertising, and other expensive frills.

* * * nothing to catch on rough edges and sharp points.

The respondent hereby admits:

This respondent is not seeking demonstrators but salespersons to sell its hosiery;

No hose are given "free" to agents for their wear, but are given as part of compensation for selling certain quantities within specified periods of time;

That certain photographs and samples purporting to illustrate the superiority of the thread used in respondent's product as compared to thread used in competitive products do not truly represent the actual degree of the twist in respondent's special thread and the degree of twist in competing threads;

That the respondent manufactures and sells two grades of hose, namely, "chiffon" and "service", and that the former possesses certain advantageous features not possessed by the latter;

That lisle yarn is used to reinforce certain parts of respondent's product, which is represented as 100% pure silk;

That respondent sells his product through salespersons who operate on a commission basis;

That the snag-resisting quality of these hose is not sufficient to insure against snags being caused by catching on rough edges and sharp points in all cases.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That it wants women to merely demonstrate hosiery until it employs women to demonstrate hosiery, and pays them for it regardless of sales made;

(b) That hose are furnished free for wear by agents, unless they are in fact furnished without consideration in money or service;

(d) That "canvassing" is not necessary or required to sell its hosiery;

(e) That respondent's hose are made of 100% pure silk so long as any other thread enters into the construction of any part of the hose;

(f) By implication or inference that the buyer saves the cost of selling through retailers so long as respondent employs agents to secure orders from consuming buyers, and/or expends substantial amounts for advertising;

(g) That these hose are so manufactured that "there is nothing to catch on rough edges and sharp points"; and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from making any comparison, by the use of photographs, samples, or otherwise, between respondent's product and products of competitors, unless such comparison accurately and truthfully sets forth the results of such comparison.

The respondent further stipulates and agrees not to make any claims for his product which are not true of both grades of hose sold unless such claims are clearly and distinctly limited to the appropriate grade. (Aug. 3, 1936.)

01474. Vendor-Advertiser—Medicinal Preparation.—George Earl McKewen, George McKewen, Mrs. George McKewen, Mr. and Mrs. Leroy Burdette, James Howard, Jr., H. B. Baker, representing Publicity Engravers, copartners, doing business under the firm name of Herbal Medicine Co., and Natex Co., Baltimore, Md., vendor-advertisers, are engaged in selling a medicinal preparation designated Herb Doctor Compound and Natex, and in advertising represented:

For sufferers from—

STOMACH TROUBLES

RHEUMATISM

NEURITIS

LIVER TROUBLES

DERANGED KIDNEYS

LOSS OF SLEEP

NERVOUSNESS

HEADACHES DUE TO CONSTIPATION

GENERAL RUNDOWN CONDITIONS.

Quick relief from * * * indigestion, that stuffy feeling around the heart, and other simple pains in the stomach.

Regulates Bowels

Furthermore, HERB DOCTOR contains certain elements which not only move the bowels, but *tend to regulate them so that they remain normal.*

BUILDS RICH, RED BLOOD
A TONIC FOR WHOLE SYSTEM

If you want the sparkling eyes, the ruddy clear complexion, the hearty appetite, the sound refreshing sleep, the freedom from suffering and pain, and the energy and vitality of the healthy, give nature the opportunity to help you as she has helped so many others. Herb Doctor is Nature's own medicine, made from Nature's roots and herbs. Let it prove that it can help you as it has helped so many others.

STOMACH TROUBLE
COULDN'T RAISE ARM

"Thanks to Herb Doctor, I am *entirely rid of rheumatism* and no longer suffer with indigestion", declared Mr. John M. Weaver, 501 Locust St., Lancaster, Pa.

Herb Doctor is different from ordinary medicines and tonics. Herb Doctor *gets to the roots* of your trouble, *relieves the cause*, and in this way builds up sound health that does not disappear as soon as you have stopped the treatment.

In this way Herb Doctor *ends the suffering caused by constipation, indigestion, gas on the stomach, Nervousness, poor sleep, bad breath, Rheumatism, neuritis, headaches, dizzy spells, general weakness* and lack of vitality and the many other complaints caused by the failure of the stomach, kidneys, liver and bowels to function properly. It has you feeling like a different person two weeks after you have started on the treatment and in a month you will not know yourself.

Makes no difference whether you are merely a bit rundown or whether you suffer with ailments of long standing. Herb Doctor can help you. It is positively the finest herbal medicine that money can buy.

HERB DOCTOR COMPOUND * * * restoring rundown, ailing people to health and strength.

There is nothing more miserable in this world than poor health! But the tragic part of it all is this: So many people suffer needlessly. So many people who are constantly afflicted with indigestion, stomach disorders, lack of vitality and countless other ailments do not know that Constipation is the underlying cause of most of these sufferings! *Herb Doctor is compounded to correct this condition!*

My boils and pimples are gone.

Eczema.

Similar and almost identical representations to those set forth above are being made by these advertisers for their preparation NATEX, which is compounded from practically the same ingredients as HERB DOCTOR COMPOUND, and both preparations are sold for substantially the same use and conditions.

The respondents hereby admit:

That, although respondents' products may serve as laxatives or stomachics and through their bitter principles tend to increase or stimulate the appetite, they are not considered competent treatments or cures for:

Dyspepsia
Nausea
Constipation
Indigestion
Rheumatism
Headaches
Backaches
Nervousness
Sleepless nights
Dizziness
Stomach ulcers
Stomach troubles

Liver troubles
Deranged kidneys
Neuritis
Bowel troubles
Neuralgia
Female weakness
General run-down condition
Heartburn
Heart fluttering
Gastritis
Shortness of breath
Cramps

Biliousness	Getting up nights
High blood pressure	Impure blood
Catarrh	Boils
Pains in the limbs, joints, and muscles	Pimples
	Eczema

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either Matex or Herb Doctor Compound is a competent treatment for:

Dyspepsia	Female weakness
Nausea	General run-down condition
Constipation	Heartburn
Indigestion	Heart fluttering
Rheumatism	Gastritis
Headaches	Shortness of breath
Backaches	Cramps
Nervousness	Biliousness
Sleepless nights	High blood pressure
Dizziness	Catarrh
Stomach ulcers	Pains in the limbs, joints and muscles
Stomach troubles	Impure blood
Liver troubles	Boils
Deranged kidneys	Pimples
Neuritis	Eczema
Bowel troubles	
Neuralgia	

(b) That either of respondent's preparations is a new medicine;

(c) That either of respondents' preparations will end indigestion;

(d) That either of respondents' preparations neutralizes acidity;

(e) That either of respondents' preparations will give quick relief from indigestion, (that stuffy feeling around the heart), and other pains in the stomach not associated with gas or flatulency;

(f) That either of respondents' preparations regulates the bowels so that they remain normal, and a continuous use of laxatives becomes unnecessary;

(g) That either of respondents' preparations builds rich, red blood, bringing new life and health to starved tissues throughout the body, or aiding in driving poisons and impurities from the system and blood;

(h) That either of respondents' preparations acts as a tonic for the whole system, restoring health and strength to those suffering from the agonies of stomach trouble, constipation, rheumatic pains, sleep-

less nights, lack of pep and vigor and other ailments due to poisonous waste matter in the system and general rundown condition;

(i) That either of respondents' preparations will give one sparkling eyes, a ruddy clear complexion, sound refreshing sleep, freedom from suffering and pain, and the energy and vitality of the healthy;

(j) That either of respondents' preparations contains two special ingredients which when acting together, give the entire system a thorough cleansing;

(k) That either of respondents' preparations will cause one to be entirely rid of rheumatism;

(l) That any of the following conditions or ailments is probably due to deranged stomach, liver, kidneys or bowels:

Body aches and pains	Bad taste in the mouth
Aches and pains of bowels	Weak or rundown condition
Constipation	Nervousness
Sour stomach	Irritability
Indigestion	Depressed feeling
Dyspepsia	Night rising
Sudden sharp pains	Pains in the back
Sluggish liver	Impurities in the system
Coated tongue	Impure or poor blood
Bilious spells	Pimples
Dizziness	Skin disorders
Sick headaches	

(m) That either of respondents' preparations gets to the roots of your trouble, and relieves the cause, and builds up sound health that does not disappear as soon as treatment is stopped;

(n) That either of respondents' preparations acts as a diuretic to the kidneys;

(o) That either of respondents' preparations tones up the stomach so that one can eat heartily and digest every mouthful;

(p) That either of respondents' preparations ends the suffering caused by constipation, indigestion, gas on the stomach, nervousness, poor sleep, bad breath, rheumatism, neuritis, headaches, dizzy spells, general weakness and lack of vitality and the many other complaints caused by the failure of the stomach, kidneys, liver and bowels to function properly;

(q) That either of respondents' preparations will end 20 years of stomach misery in one month;

(r) That either of respondents' preparations will regulate the liver;

(s) That either of respondents' preparations will give permanent relief from, "rid" "banish", "and", or "correct" any physical disorder or disease; or remove the basic cause thereof;

and from making any other claims or assertions of like import. (Aug. 11, 1936.)

01475. Vendor-Advertiser—Cosmetics, Etc.—Blair Laboratories, a corporation, Lynchburg, Va., vendor-advertiser, is engaged in selling various products designated—

WHITEHOUSE CLEANING FLUID,
 WHITEHOUSE HOUSEHOLD CEMENT,
 AIRO-ZONE,
 DR. BLAIR'S CREAM OF CUCUMBER,
 DR. BLAIR'S SNOW WHITE BLEACHING CREAM,
 DR. BLAIR'S BEAUTY CLAY,
 N. B. O. DEODORANT CREAM.
 DR. BLAIR'S DOUBLE DISTILLED EXTRACT WITCH HAZEL,
 DR. BLAIR'S SHAVING LOTION,
 DR. BLAIR'S HAIR TONIC,
 FAMILY SALVE,

and in advertising represented:

Whitehouse Cleaning Fluid is the perfect home dry cleaner.

The join made with Whitehouse Household Cement is stronger than before the break occurred . . . For shoes, torn soles or anything else of leather Whitehouse Household Cleaner will hold it together so tight *it won't ever come apart again.*

Airo-Zone makes your clothes closets moth proof.

Instances have occurred where the use of Dr. Blair's Cream of Cucumber has entirely cured ugly face eruptions and blemishes, often caused by the use of irritating face powders.

The use of Dr. Blair's Cleansing Cream quickly restores the pure, delicate complexion so typical of youth, and preserves it for years to come. Dr. Blair's cleansing Cream quickly rids the pores of waste matter. It prevents blemishes.

Dr. Blair's Snow White Bleaching Cream is guaranteed to clear up the complexion, lighten dark or sallow skin, remove bumps, blackheads, pimples, etc. *It makes the skin fairer . . . it has been used with perfect results for years and years.*

Dr. Blair's Acne Cream is a medicated complexion cream. At the same time the medical properties are exerting their influence upon such blemishes as acne, blackheads, pimples, and eruptions of various kinds, the cream is acting as a skin-food to build up the broken down tissues. It refines the skin, reduces large pores, and gives the complexion a tone of genuine healthfulness.

Flabby, sallow and wrinkled skins are almost entirely due to the lack of vigorous circulation, and Dr. Blair's Beauty Clay corrects the trouble by removing the cause.

N. B. O. Deodorant Cream banishes perspiration odor because it actually destroys perspiration odor.

Dr. Blair's Double Distilled Extract Witch Hazel, $2\frac{1}{2}$ times stronger than the U. S. P. requirements.

Dr. Blair's Shaving Lotion . . . acts as a real healer for facial blemishes and kills germs which sometimes infect slight cuts and scratches . . . the regular use of this lotion after shaving prevents face eruptions, and keeps the skin in a healthy condition.

Dr. Blair's Hair Tonic . . . removes dandruff, stops itching scalp, falling hair, and restores a healthy condition.

Family Salve that heals cuts, wounds, burns, abrasions, bites, itching, piles, hemorrhoids, stings of insects, chapped, cracked or rough skin.

The respondent hereby admits:

That no cleaner can be truthfully designated as "the perfect" cleaner, and Dr. Blair's Cleaning Fluid is not the only good cleaning fluid sold;

That Airo-Zone will not make clothes closets moth proof;

That, while the use of Dr. Blair's Cream of Cucumber may in some instances be beneficial in the treatment of ugly face eruptions and blemishes, it cannot be always relied upon to cure such conditions;

That, while cleansing creams are intended to clean the skin better than soap and water, they will not restore the pure, delicate complexion typical of youth nor preserve it. Neither will they "rid" the pores of waste matter or prevent blemishes;

That, while Dr. Blair's Snow White Bleaching Cream may lighten the color of the skin by a bleaching process, it will not clear up the complexion; lighten sallow skins; or remove bumps, blackheads, or pimples, unless they are superficial and due to external causes;

That, while Dr. Blair's Acne Cream may in some instances have a beneficial effect on some skin blemishes, it is not a "skin-food" and will not build up broken down tissues; nor can it always be relied upon to refine the skin, reduce pores, or give the skin a tone of genuine healthfulness;

That, while Dr. Blair's Beauty Clay may have some beneficial effect upon flabby, sallow, wrinkled skins in some instances, it cannot always be relied upon to "correct the trouble by removing the cause";

That N. B. C. Deodorant does not "banish" perspiration odor;

That, while U. S. P. formerly listed a standard for Witch Hazel, the last edition omits it. Dr. Blair's Double Distilled Extract of Witch Hazel is $2\frac{1}{2}$ times stronger than the standard formerly listed in the U. S. P. and is approximately $2\frac{1}{2}$ times stronger than specified in the National Formulary;

That Dr. Blair's Shaving Lotion cannot always be relied upon to kill all germs that may infect slight cuts and scratches, nor will its use after shaving prevent face eruptions or keep the skin in a healthy condition in every instance;

That Dr. Blair's Hair Tonic cannot always be relied upon to remove dandruff, stop itching scalp and falling hair, nor will it restore a healthy condition to the scalp in every instance;

That, while Family Salve may be beneficial in some instances, it cannot be relied upon to "heal" cuts, wounds, burns, abrasions, bites, itching piles, hemorrhoids, stings of insects, chapped, cracked or rough skin;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Whitehouse Cleaning Fluid is "the" perfect home dry cleaner;

(b) That "the join" made with Whitehouse Household Cement is stronger than before the break occurred;

(c) That Whitehouse Household Cement will hold together shoes, torn soles, or anything else made of leather, so tight it won't ever come apart again;

(d) That Airo-Zone makes clothes closets moth proof;

(e) That Dr. Blair's Cream of Cucumber will entirely cure face eruptions and blemishes caused by the use of irritating face powders;

(f) That the use of Dr. Blair's Cleansing Cream

1. Quickly restores the pure, delicate complexion so typical of youth, and preserves it for years to come;
2. Quickly "rids" the pores of waste matter; or
3. Prevents blemishes;

(g) That Dr. Blair's Snow White Bleaching Cream will clear up the complexion; lighten dark or sallow skins; or remove bumps, blackheads, pimples, etc., unless such conditions are limited to external causes;

(h) That Dr. Blair's Acne Cream

1. Is a Skin Food;
2. Builds up broken down tissues;
3. Refines the skin;
4. Reduces large pores; or
5. Gives the complexion a tone of genuine healthfulness;

(i) That Dr. Blair's Beauty Clay corrects flabby, sallow and wrinkled skins by removing the cause;

(j) That N. B. O. Deodorant "Banishes" perspiration odor;

(k) That Dr. Blair's Double Distilled Extract Witch Hazel is $2\frac{1}{2}$ times stronger than the U. S. P. requirements;

(l) That Dr. Blair's Shaving Lotion

1. Acts as a real healer for facial blemishes;
2. Kills germs;
3. Prevents face eruptions; or
4. Keeps the skin in a healthy condition;

(m) That Dr. Blair's Hair Tonic

1. Removes dandruff;
2. Stops itching scalp;
3. Stops falling hair; or
4. Restores a healthy condition;

(n) That Family Salve "heals" cuts, wounds, burns, abrasions, bites, itching piles, hemorrhoids, stings of insects, chapped, cracked or rough skin; and from making any other claims or assertions of like import. (Aug. 14, 1936.)

01476. Vendor-Advertiser—Medicinal Preparation.—Seabury, Inc. (formerly Seabury and Johnson), a corporation, New Brunswick, N. J., vendor-advertiser, is engaged in selling Edrolax, represented as a remedy for constipation, and in advertising represented:

The daily use of Edrolax is recommended to keep the intestinal tract in a normal, healthy condition, thus safe-guarding you from the likelihood of constipation.

Especially recommended for children, particularly those who are a feeding problem, half an envelope in the morning, the other half at night.

Here is a simple corrective vegetable bulk mixture.

A series of treatments each lasting from six to ten days should produce satisfactory evacuation with regularity.

In the habitual or chronic form of constipation, and in those requiring a return of tonic activity to the bowel, the ideal medication is one which, when ingested, will encourage natural peristalsis. A product of this type presents an effective method for producing results—and for a suitable period of time.

Edrolax is not a medicine, not a cathartic.

One portion provides your system with all the vegetable bulk and lubrication a whole vegetable dinner would.

Cathartics are frequently the cause of constipation. Most of them contain drugs that irritate and weaken the intestinal wall. How different from Edrolax.

Edrolax exercises and strengthens the intestinal muscles—trains them to function normally and independently.

The respondents hereby admit:

That Edrolax could not be depended upon as a competent treatment or an effective remedy for the various pathological conditions mentioned in said advertising, except that some cases of constipation may be benefited by its use; that it would not produce the results claimed for it as an aid to diet, or be of particular value as such to children or those who are a feeding problem;

That cathartics are not the cause of constipation.

The respondents represent that the foregoing advertisements were contained in literature which was purchased by them at the time they purchased the product, and that since that literature has been exhausted none of the representations have been repeated in other advertising literature.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Edrolax is a competent treatment or an effective remedy for constipation, unless limited to those types of constipation, the relief of which is within the known therapeutic efficacy of the product;

(b) That the use of said product will keep the intestinal tract in a normal, healthy condition, or safe-guard one against the likelihood of constipation;

(c) That said product is especially beneficial to children;

(d) That said product is a "corrective" for constipation;

(e) That said product is not a medicine nor a cathartic;

(f) That one portion of said product provides as much vegetable bulk or lubrication as a whole vegetable dinner would provide;

(g) That most cathartics weaken the intestinal wall;

(h) That said product trains the intestinal muscles to function normally or independently;

(i) That the use of said product would be effective in returning tonic activity to the bowel;

and from making any other claims or assertions of like import. (Aug. 31, 1936.)

01477. Vendor-Advertiser—Cleaning Compound.—Durand-McNeil-Horner Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a product designated Klor-O-Wash, and in advertising represented:

Klor-O-Wash, deodorizer and disinfectant.

Cleans sinks, bathtubs, linoleum, floors, woodwork, oilcloth, painted walls, drainboards.

Alcohol, ink, coffee, tea, fruit, mildew and scorch stains will be easily removed from white cotton or linen fabrics by soaking the article for a few minutes in a solution of one part Klor-O-Wash to twenty parts of water.

The respondent admits:

That Klor-O-Wash, while possessing many efficacious qualities, cannot always be relied upon as a deodorizer and disinfectant, nor can it be effectively used as such without first thoroughly washing the places or articles to be deodorized and disinfected;

That while Klor-O-Wash will remove some stains from white cotton or linen fabrics, it cannot always be relied upon to remove all stains.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Klor-O-Wash is a deodorizer and disinfectant for china-ware, glassware, pots, pans, washbowls, bathtubs, tile floors, woodwork, linoleum, and sickroom equipment, unless such representations are accompanied by instructions to the effect that the places or

articles to be deodorized and disinfected should be thoroughly washed before using Klor-O-Wash;

(b) That Klor-O-Wash will remove alcohol, ink, coffee, tea, fruit, mildew, and scorch stains from white cotton or linen fabrics by soaking the article for a few minutes in a solution of one part of Klor-O-Wash to twenty parts of water;

and from making any other claims or assertions of like import. (Aug. 31, 1936.)

01478. Vendor-Advertiser—Medicinal Preparation.—Carl A. Burkhardt, an individual, operating under the trade name of Family Remedy Co., Oakland, Calif., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Wong Yick Family Tea, and in advertising represented:

Wong Yick Family Tea is a safe, pleasant and most effective treatment intended for the relief of indigestion, Sour Stomach, Nervous Dyspepsia, Heartburn, Lack of Appetite, Gas in Stomach and Bowels, Constipation, Dizziness, Nausea, Bloating and all ailments resulting from faulty elimination.

While Wong Yick Family Tea helps you get rid of excess moisture weight. * * * remember it is used as a poison * * * banishing agent * * * intended to clean the system of poisonous toxins and waste matter * * * when due to faulty elimination * * * it has been found very effective in removing the cause of many obstinate and obscure ailments.

* * * abnormal conditions of the system, such as indigestion, constipation, rheumatism aches and pains, nervousness, sleeplessness, neuritis and all ailments which are the result of faulty elimination.

You will find it very effective for the many common ailments and abnormal conditions which are caused by constipation and a poisoned system, such as indigestion, nervousness, and sleeplessness, rheumatic aches and pains, neuritis and all those conditions which are caused by poisons, and poisonous toxins which have been stored up within the system. Start now to cleanse your system of those poisons and poisonous toxins which cause so much pain and misery.

CHECK YOUR SYMPTOMS

The following are a few of the many common ailments which may be caused by constipation, faulty elimination, and self poisoning. If you suffer from any of these you owe it to yourself to increase your elimination and see if that does not correct your troubles.

Gassy Fullness After Eating
Irregular Bowel Movement
Irritableness
Dizziness
Bad Breath
Pimples
Overweight
Billiousness
Pains in Small of Back
Headaches

Belching
Poor Appetite
Sleeplessness
Nervousness
Lack of Pep
Indigestion
Bad Taste in Mouth
Rheumatic Pains
Sallow Complexion

The respondent hereby admits:

That this preparation will produce no therapeutic benefit beyond that of a mild laxative and diuretic, tending to relieve temporary or occasional constipation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this preparation is "scientific";

(b) That this product is a competent treatment or an effective remedy for—

Indigestion	Belching
Nervous dyspepsia	Poor appetite
Heartburn	Sleeplessness
Lack of appetite	Nervousness
Constipation	Lack of pep
Dizziness	Bad taste in mouth
Nausea	Rheumatic pains
Gassy fullness after eating	Sallow complexion
Irregular bowel movement	High blood pressure
Irritableness	Neuritis
Bad Breath	Arthritis
Pimples	Sinus trouble
Overweight	Bleeding of the lungs
Biliousness	Bleeding of the intestines
Pains in small of back	Tuberculosis
Headaches	Asthma

(c) That this preparation is "natural" or that it is Nature's own internal cleanser and system tonic,

(d) That this product is non-habit forming and/or a "thorough internal cleanser";

(e) That Wong Yick Family Tea will put the eliminating system into shape if one is "full of aches and pains and miseries";

(f) That this preparation is a competent treatment or effective remedy for weakened peristaltic action of the colon;

(g) That Wong Yick Family Tea will "rid" or help "rid" one of excess moisture weight;

(h) That this preparation will be "found very effective in removing the cause of many obstinate and obscure ailments";

(i) That one is constipated if he does not eliminate from the digestive tract three times daily;

(j) That Wong Yick Family Tea is a "healing" agency;

(k) That this preparation is a competent treatment or an effective remedy for—

1. Kidney disorders,
2. Kidney troubles,
3. Nervousness due to kidney trouble;

(l) That this product will “banish” poison and poisonous toxins from the system;

(m) That this preparation will cause the kidneys to function properly;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01479. Vendor-Advertiser — Medicinal Preparation.— Martha E. Richason, an individual operating under the trade name of Athex Co., St. Louis, Mo., vendor-advertiser, is engaged in selling a medicinal preparation designated Athex, and in advertising represented:

Do you suffer with Athlete's foot? You have tried the rest of the remedies, now try the BEST * * * Athex.

One bottle of Athex is guaranteed to relieve the most stubborn case of Athlete's Foot. Athex is safe and easy to apply.

Kills Fungus Growth “Athlete Foot” in 2 to 5 Applications or Money Refunded.

Athex is GUARANTEED to Kill the Germ Causing Itch, Ringworm, Rash, Tetter, Cracked Skin, Blisters Between Toes and Bottom of Feet, Rawness or Itching Condition on any Part of Body.

Guaranteed to Heal Athlete Foot Itch, Ringworm in 2 to 5 Applications.

ATHEX is guaranteed to kill all germs causing Itch—Ringworm—Blistered Feet—Rash or Tetter—known as ATHLETE'S FOOT.

The respondent hereby admits:

That Athex does not contain sufficient ingredients to constitute an adequate treatment for athlete's foot.

That “Athlete's Foot” is not synonymous with itch, ringworm, blistered feet, rash or tetter. That Athex cannot be depended upon as a competent treatment for itch, ringworm, rash, tetter, cracked skin, or “rawness or itching condition on any part of body.”

That no medicinal preparation can be “guaranteed” to produce given results.

That only nature can “Heal.”

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Athex is a competent treatment or effective remedy for athlete's foot, or that—

1. It is the best remedy for athlete's foot,
2. One bottle is guaranteed to relieve the most stubborn case of athlete's foot, or

3. Athex will kill the fungus growth "Athlete's foot, in 2 to 5 applications, or at all;

(b) That Athex is a competent treatment or an effective remedy for—

1. Itch,
2. Ringworm,
3. Rash,
4. Tetter,
5. Cracked skin, or
6. Rawness or itching condition on any part of body;"

(c) That athlete's foot is synonymous with—

1. Itch,
2. Ringworm,
3. Blistered feet,
4. Rash, or
5. Tetter;

(d) That Athex is "guaranteed" to produce any stated therapeutic effects;

(e) That Athex will "heal" athlete's foot, itch, ringworm, or any other conditions;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01480. Vendor-Advertiser—Washing Fluid.—Wilbert Products Co., Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a washing fluid designated Javex, and in advertising represented:

Disinfectant. Germicide. Deodorant.

Remove stains such as fruit, ink, vegetable, medicine, dye, wine, coffee, grass and blood stains, also scorch.

Cleans, Bleaches, Deodorizes.

It squelches disagreeable odors and kills germs.

Javex is magical in whitening clothes.

It is wonderful in removing stains, mildew and scorch.

Highly germicidal, it disinfects as it whitens, brightens and cleans.

OUR GUARANTEE

We guarantee that Wilbert's Javex is standardized as to purity and concentration * * * that it is an effective scientific preparation of known germicidal potency * * *

Destroys odors * * * Removes mildew and scorch.

The respondent hereby admits:

That Javex cannot be depended upon to deodorize or disinfect sick room equipment, toilets, bathtubs, wash basins, etc., unless the article is cleaned before using the disinfectant and deodorizer;

That, according to the weight of scientific authority, Javex cannot

always be depended upon to kill all germs, including their spores, or squelch all disagreeable odors, or destroy odors.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Javex disinfects or deodorizes unless directions are given for first cleansing the article to be disinfected or deodorized;

(b) That Javex

1. Kills all germs, including their spores;
2. Squelches disagreeable odors; or
3. Destroys odors;

(c) That Javex

1. Is "magical" in whitening clothes; or
2. Disinfects as it whitens;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01481. Vendor-Advertiser—Medicinal Preparation.—E. J. O'Bryan, an individual operating under the trade name of Hemerald Co., Detroit, Mich., vendor-advertiser, is engaged in selling Hemerald Pile Ointment, and in advertising represented:

It is of an antiseptic nature and kills the harmful germs that irritate the membrane.

If used in accordance with directions, Hemerald will usually relieve the most stubborn and painful case of piles in a remarkably short time.

I was having trouble with piles and had tried several remedies. I have used Hemerald several times, find it has relieved me entirely.

After the very first application I was greatly relieved and after the second, the bleeding completely stopped.

After using Hemerald Ointment I received immediate relief and have not had a recurrence of this disease.

Hemerald Pile Ointment. Treatment of Hemorrhoids, as well as all form of Piles. Blind, Bleeding, Itching, and Protruding.

We have known of cases where the patient has been bedridden for a long period of time, and been placed back on their feet in a surprisingly short time.

The method of application simple to use, doubly effective, as it actually reduces the swollen blood vessels, healing and absorbing, thus stopping the inflammation, and at the same time is harmless, due to the fact that narcotics are not used.

It will give you an understanding of your own condition—and why Hemerald can give you such quick and untold relief.

We feel sure we have been of service to you, by bringing such information, and that you will not continue to neglect yourself, or take any chances of contracting such ailments as Fistula, Liver and Kidney troubles, Sciatic, Neuritis, Rheumatism, as well as constipation with Colon trouble, which follow if Piles are not treated.

Is genuine relief possible?

The respondent hereby admits:

That this preparation would have a soothing and astringent effect and would act as an emollient, but that its therapeutic benefit is limited to such action, and that it will not constitute a competent treatment or effective remedy for piles;

That Hemerald Pile Ointment is not a germicide or antiseptic.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Hemerald Pile Ointment is an antiseptic, or a germicide, or that it will kill germs that irritate the membrane;

(b) That Hemerald Pile Ointment is a competent treatment or an effective remedy for piles unless specifically limited to its soothing and astringent effect, and action as an emollient;

(c) That this ointment will—

1. Relieve the most stubborn and painful case of piles in a remarkably short time or at all,
2. Relieve one "entirely",
3. Stop the bleeding of piles,
4. Prevent a recurrence of piles,
5. Constitute a treatment for hemorrhoids and all kinds of piles, including blind, bleeding, itching, and protruding,
6. Place a patient on his feet in a surprisingly short time, or at all, where he has been bedridden for a long period of time,
7. Produce "genuine relief",

(d) That Hemerald Pile Ointment will reduce swollen blood vessels, or that it is "healing";

(e) That this ointment will prevent—

1. Fistula,
2. Liver and kidney troubles,
3. Sciatic neuritis,
4. Rheumatism,
5. Constipation with colon trouble,

or "such ailments as" the above, or that these conditions will follow if piles are not treated;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01482. Vendor-Advertiser—Booklets.—George Rosenzweig, Jr., an individual, trading as International Agency, Cincinnati, Ohio, vendor-

advertiser, is engaged in selling booklets entitled "The Herbalist", "Complete Index of Salable Raw Drugs" and "Supplement of Raw Drug Buyers," and in advertising represented:

* * * we have compiled for you a COMPLETE INDEX OF SALEABLE RAW DRUGS of the United States and Canada, with a SUPPLEMENT OF RAW DRUG BUYERS.

* * * OUR SPECIAL—COMBINATION OFFER!—The INDEX and MARKET SUPPLEMENT are complete—there's nothing else to buy in order to enter this profitable occupation wherever you are located. We have established the price of the combined INDEX and MARKET SUPPLEMENT at \$2—

* * * However, in order to get you started promptly in the work and in recommending us to friends, we have decided to make a Special Introductory offer to you of the COMBINED INDEX and SUPPLEMENT for only \$1, postpaid! This sensational get-acquainted offer is good for TEN DAYS ONLY after you receive this notice.

The INDEX and the SUPPLEMENT are "useless each without the other". Therefore, they will be sent to you in combination only, but by acting promptly you avoid the chance of disappointment and GET THE TWO LISTS FOR THE PRICE OF ONE!

Wanted Common Weeds by Steady Buyers. Details with magazine of opportunities, 10¢.

THE HERBALIST * * * It's a complete study and education in Nature's Healing Roots, Herbs and Barks. It's thorough—complete—* * * This remarkable book actually teaches you how to recognize, gather and prepare the roots, herbs, flowers and seeds of nature's fields and forests, so that they will be most acceptable to those to whom you offer them. This book actually constitutes a complete course in the business of gathering botanicals for profit. It contains 400 pages—288 pictures of plants in natural colors—and over 300 illustrations and descriptions of the valuable plants of every section of the country.

* * * The author has spent years and gone to great expense to make this textbook complete in every way.

* * * A 400-page book of this kind with hundreds of colored illustrations usually costs no less than \$5.00 * * *

CASH—Gathering common weeds, roots, bark. Details 10¢. International Agency, Cincinnati.

The respondent hereby admits:

He does not purchase weeds, roots or bark, neither does he employ others to gather such items;

Neither booklet gives information on drugs nor information as to drug buyers, and they may be separately used;

He furnished no evidence that his offer mentioned in the advertisements is a special offer or that it is limited to a ten-day period of time;

The booklet entitled "The Herbalist" does not teach one a knowledge of herbs, roots and barks; neither is it a textbook in such subjects nor a complete course in such business;

The price at which he advertises the booklet entitled "The Herbalist" is the regular price of such booklet;

Complete details of the business are not sent upon receipt of the amount sent in answer to the contact advertisements;

The business is not International in its scope nor does he act as an agent for any other person, firm or corporation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the booklet entitled "The Index" is an index of "drugs";

(b) That the booklet entitled "A Supplement" is a supplement of buyers of drugs;

(c) That the Index and Supplement are "useless each without the other", or that both are sold "for the price of one";

(d) That the booklet entitled "The Herbalist" teaches one to recognize, gather or prepare roots, herbs, flowers or seeds for the market, or that it is a textbook or a complete course in such business;

(e) Inferentially or otherwise, that the usual cost or value of merchandise sold by respondent is any amount in excess of its actual bona fide market cost or value;

(f) Inferentially or otherwise, that respondent offers any employment, or buys or finds the market for any item, until such be the case;

(g) That any offer is for a certain definite, limited period of time, unless an actual time limit is fixed and all remittances received after the termination of such period are returned to the sender;

(h) That respondent furnishes details of any business for any amount to those answering respondent's contact advertisements, unless complete details are sent or the contact advertisements are qualified so as to inform the reader that only partial details are sent; and from making any other claims or assertions of like import. (Sept. 10, 1936.)

10483. Vendor-Advertiser—Food Supplement.—Ultra-Life Laboratories, Inc., a corporation, East St. Louis, Ill., vendor-advertiser, is engaged in selling a product designated Ultra-Life, and in advertising represented:

Ultra-Life is a combination of a number of super expensive ingredients * * * which is guaranteed, when mixed according to our formula, to add exactly the required amount of every known vitamin to your feeds.

High Production, Fertility, Hatch-ability, livability—That's your chief problem and that of your flock owners for the next six months . . . Only Ultra-Lifed Feeds can give you lowest mortality, increased health, maximum results.

We experienced the clearing up of Chicken Pox and some diseases that agricultural colleges and poultry experts could not identify.

Your local mixer is making Starting Mash mixed with Ultra-Life. Buy this Mash from him and start your Chicks right—build resistance to all diseases—positively protect them from having some diseases.

We had 100 pullets affected with Coccidiosis, ruffled feather, and a small amount of blood in droppings, but when changed to a disease formula mixed with Ultra-Life, were brought back to health with no loss.

The respondent hereby admits:

Many of the conditions to which farm animals are subject are caused by infection and other circumstances not related to dietary deficiency and the efficacy of respondent's product is limited to conditions due to a sub-optimal supply of the vitamins.

The ordinary diet of poultry and other farm animals does not necessarily require reinforcement with all of the vitamins, and there is insufficient information available regarding the requirements of the various animals for each of the vitamins to enable a determination as to what constitutes a balanced proportion.

It has published certain photographs of groups of chickens and comparative statements based upon a test which did not accurately reflect the value of its product in that different feeds were given to the two groups and the addition of its product to the feed of the experimental group was not the only factor responsible for the difference in results.

Respondent does not, in fact, guarantee that its product will add the exact required amount of vitamins to feeds.

There are other products in which all of the vitamins are contained.

Equal beneficial results in the health of poultry can be derived from feeds in which respondent's product is not contained.

It has furnished no evidence that toxic effects result from an imbalance of vitamins.

There is no evidence to substantiate its statement that the Government is continually removing from the market medicines prepared to treat livestock diseases.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product is guaranteed to add the exact required amount of every vitamin to feeds;

(b) Inferentially or otherwise, that respondent's product is the only product containing any number of the vitamins unless substantiated by factual evidence;

(c) That certain beneficial results in the health of poultry cannot be derived from feeds in which respondent's product is not contained;

(d) That a balanced proportion of the food substances can be procured only by the use of respondent's product;

(e) That toxic effects result from an imbalance of vitamins;

(f) That respondent's product, when added to poultry feeds can be relied upon as a treatment for Chicken Pox or unidentified diseases of poultry;

(g) That the Government is continually removing from the market medicines prepared to treat live-stock diseases;

(h) Inferentially or otherwise, that use of respondent's product will protect from or prevent diseases of poultry unless limited to its aid in treating such conditions due to a suboptimal supply of vitamins;

(i) That it is necessary for poultry feeds to be balanced in vitamins or that it is necessary that such feeds contain all vitamins;

(j) That respondent's product will restore the appetite or health of poultry;

(k) That by the use of respondent's product the normal weight of poultry will be restored;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01484. Vendor-Advertiser—Ladies' Fur and Fur Trimmed Coats.—Saks Fur Co., a corporation, Washington, D. C., vendor-advertiser, is engaged in selling ladies' fur and fur trimmed coats, and in advertising represented:

LADIES FUR COATS

"Hudson Seal"

"Certified Seal" (Footnote: Dyed Coney; Seal Dyed Coney)

"Beaverette"

"Chinese Caracul"

LADIES' FUR TRIMMED COATS

"Jap Weasel"

The respondent hereby admits:

That its fur coats are not made from the furs of the animals designated in its advertisements, but that said furs are from animals other than those designated and are dressed and dyed to simulate or resemble the furs of the animals indicated in its advertisements.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Describing furs in any other way than by the use of the correct name of the fur as the last word to the description, and when any dye or blend is used simulating another fur the true name of the fur appearing as the last word of the description must be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur.

(b) Using the word "seal" alone or in connection, combination or conjunction with any other word or words to describe or designate dyed coney, unless and until the word "seal" is compounded with the word "dyed" and such compounded word is immediately followed by the word "coney", as a "seal-dyed coney".

(c) Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed muskrat unless and until the word "seal" or the words "Hudson Seal" are compounded with the word "dyed" and such word or words so compounded are immediately followed by the word or words signifying or designating the true name of the fur, as "seal-dyed muskrat" or "Hudson Seal-dyed muskrat".

(d) Using the word "seal" or the words "Hudson Seal" standing alone or in connection, combination or conjunction with any other word or words (regardless of corporate name, trade name or trademark), except that the word "seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat or coney fur, as "seal-dyed muskrat" or "seal-dyed coney", and except that the words "Hudson Seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat or coney fur, as "seal-dyed muskrat" or "seal-dyed coney", and except that the words "Hudson Seal" may be used as an adjective to denote or describe the color or character of the dye of muskrat fur, as "Hudson Seal-dyed muskrat".

(e) Using the word "Hudson" standing alone or in connection, combination or conjunction with any other word or words to describe or designate dyed coney (rabbit) fur.

(f) Representing that rabbit, coney or lapin is beaverette or from using any other descriptive term either as a prefix, suffix or name not commonly used to indicate a rabbit fur dyed to imitate beaver;

(g) Designating the fur in garments made of or trimmed with the fur from the Karakul Sheep as Chinese Caracul;

(h) Designating the fur in garments made of or trimmed with the fur from the Weasel as Jap or Japanese Weasel;

(i) Using any geographical term to describe a fur unless such fur actually comes from the region indicated or implied;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01485. **Vendor-Advertiser—Washing Fluid.**—The Star Water Mfg. Co., a corporation, Waterbury, Conn., vendor-advertiser, is engaged in selling a washing fluid designated Star Water, and in advertising represented:

Star Water is antiseptic, disinfectant, and deodorant.

It is a non-poisonous germicide, it is safe * * *.

Use a little in the dishwater, it sterilizes.

It safeguards your health.

She knows that with Star Water she can sterilize, destroy bacteria in the garbage can.

Safe.

There is no safer sterilizer or disinfectant than Star water.

The respondent hereby admits:

That "Star Water" cannot be depended upon to disinfect, unless the surface of the article to be disinfected is first thoroughly cleansed;

That, according to the weight of scientific opinion, "Star Water" is not non-poisonous or safe, and cannot always be relied upon to kill all germs, including their spores, or to safeguard health.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise

(a) That Star Water is a non-poisonous germicide, and is safe;

(b) That Star Water is an antiseptic, disinfectant or deodorant, without following this statement with directions for cleansing the article to be disinfected or deodorized;

(c) That Star Water "safeguards your health";

(d) That Star Water sterilizes, kills bacteria and disinfects when used to wash dishes;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01486. Vendor-Advertiser—Medicinal Preparation.—Paul I. Miller, an individual trading as The Bioxo Products Co., Indianapolis, Ind., vendor-advertiser, is engaged in selling a medicinal preparation designated Bioxo Salets—Tablets, and in advertising represented:

RHEUMATISM. Relieve and RID yourself of Neuritis, Neuralgia, Arthritis and Sciatica. Eminent Specialist's formula.

RHEUMATISM. Prompt and lasting relief from the pains of rheumatism, neuritis, neuralgia. Physicians formula. Highly successful.

* * * we must * * * write and tell you the interesting facts about Salets in relieving pains and aiding nature to overcome the cause of rheumatism, neuritis, lumbago and neuralgia.

The pain and discomfort in a reasonable time gives away to a feeling of well being, which will be thoroughly appreciated by you.

* * * Almost every case of rheumatism began by neglecting a head cold, defective teeth or allowing some infection to run its course.

* * * This formula is the very latest improvement in the field for the treatment of rheumatism, neuritis, neuralgia, lumbago.

It has been used as a prescription by an eminent physician before given to the public.

They serve to relieve rheumatism and help to eliminate poisons.

Eat anything that agrees with you. Your appetite will improve as you continue treatment.

Drink plenty of water. It will aid your digestive organs to assimilate your food.

Some begin to find relief at once, others not until two or three weeks. Your improvement will be gradual * * * Many have found their greatest benefits during the second months' treatment.

* * * through the prescription formula used by an eminent physician during many years of practice we are really able to furnish you with a formula that will really go to the cause of the trouble.

It is strictly an anti-rheumatic.

No other rheumatic treatment on the market has the same formula as SALETS, and "It's the formula that counts".

"I have just finished taking your trial bottle of medicine for rheumatism and I just want to say that that small amount has done me more good than all other treatments."

"You will recall my getting medicine from you during the past year, for rheumatism * * * I am now feeling entirely well and am able to work again."

"Your sample treatment of BIOXO SALETS received and taken and they sure did help me. I have not been able to work for over 2 years because of rheumatism. Have taken many other treatments but your sample bottle of BIOXO SALETS did me more good than all the other medicines I have taken."

The respondent hereby admits:

That Bioxo Salets would have no corrective effect upon the various ailments mentioned in the advertising, and the therapeutic action of said preparation is limited to the temporary relief of pain;

That according to reliable medical authority the use of said preparation may be harmful to some persons;

That there is no evidence in support of the representation that said preparation is a physician's prescription, nor was it formulated by an eminent specialist;

That the formula of Bioxo Salets is not materially different from any other preparations on the market.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent treatment or effective remedy for neuritis, neuralgia, arthritis, sciatica, lumbago, or muscular soreness, unless such representations are limited to the temporary relief of pain;

(b) That said preparation will:

1. Help to eliminate poisons,
2. Go to the cause of the trouble, or overcome the cause of any ailment,
3. Improve the appetite,
4. Aid digestive organs to assimilate food;

(c) That the formula of said preparation is the latest in the field for the treatment of the various ailments mentioned, or that it is a physician's prescription, or the formula of a noted specialist;

(d) That said preparation is an anti-rheumatic;

(e) That no other preparation on the market has the same formula as Salets;

(f) That said preparation will produce permanent or lasting results;

(g) That neglect of colds, defective teeth or infections are the causes of almost all cases of rheumatism;

and from making any other claims or assertions of like import. (Sept. 10, 1936.)

01487. **Vendor-Advertiser — Medicinal Preparation.**— Houchens Medicine Co., a corporation, Baltimore, Md., vendor-advertiser, is engaged in selling a medicinal preparation designated Houchens' Liquid Vegetable Tonic Laxative, and in advertising represented:

Liquid Tonic Laxative.

The tonic laxative.

Fight colds. Dr. Houchens Liquid Vegetable Tonic Laxative helps grown-ups as well as children * * * safe, mild, yet completely effective without discomfort. Successful since 1872.

Use the kind of laxative most doctors prescribe and hospitals use.

It tones—and helps grown-ups overcome the effects of over-indulgence in food and drink.

Biliousness, acid stomach colds and fever resulting from colds and other minor ills.

Fight colds, acid stomach * * * and upset stomach.

The respondent hereby admits:

That the major physiological action of this preparation would be that of a laxative, although it has in addition properties as a mild diaphoretic and would tend to stimulate secretion of the salivary glands and mucous glands of the respiratory tract, and therefore act as an expectorant, and that its capsicum content would tend to have a carminative effect;

That the preparation does not possess tonic value except to the intestines;

That it is not a competent treatment for colds, acid stomach, fever, biliousness, and upset stomach;

That the preparation is not the kind of laxative most physicians prescribe and hospitals use;

That the preparation will not "tone" the body, nor overcome the effects of over-indulgence in food or drink;

That the preparation contains potassium chlorate, and that no preparation which contains potassium chlorate in a substantial quantity should be recommended as safe;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the preparation has any value as a tonic except to the intestines;

(b) That the preparation is a competent treatment for colds, acid stomach, fever, biliousness, and upset stomach;

(c) That the preparation is the kind of laxative most doctors prescribe and hospitals use;

(d) That the preparation will "tone" the body or overcome the effects of over-indulgence in food or drink;

(e) That the preparation is safe so long as it contains potassium chlorate in any substantial amount as an ingredient; and from making any other claims or assertions of like import. (Sept. 11, 1936.)

01488. Vendor-Advertiser—Correspondence Course.—Frank S. Perkins, an individual operating under the trade name of National Detective System, Omaha, Nebr., vendor-advertiser, is engaged in selling a correspondence course in detective instruction, and in advertising represented:

The enclosed literature will give you just an idea of this course which opens before you a field so broad, so filled with unlimited opportunities, that you could not help but succeed in some branch of the Detective Profession. You can either work for others, or go into business for yourself.

Even while you are still taking the course we will place all detective work in your locality coming to our knowledge in your hands. This service may make it possible for you to earn more than your tuition while you are studying the National course.

A VERY SPECIAL OFFER!!! If you will send us your enrollment at once we will include WITH YOUR FIRST LESSON a copy of our new book, "Practical Instructions in Detective Work."

This Credential of Introduction should be the means of placing you in close touch with Officers of the Law, Business Men, Heads of Corporations, etc., so that you can receive first hand information while pursuing your studies.

We Pledge Our Word That YOU CAN DO IT! What these three men have done, hundreds of others have done. YOU, too, can be one of them. YOU can do what they have done if you follow our instructions and complete the lessons we will send you. The same opportunity is yours—YOU CANNOT FAIL IF YOU FOLLOW OUR ADVICE.

"Detectives never worry about finding jobs."

Here is a chance for you to let one of the leading schools in the United States give you a special training that will make you Successful and Happy.

* * * THE ONE SURE WAY OF GETTING AHEAD IS TO ENROLL FOR A COURSE THAT DOESN'T TAKE LONG TO COMPLETE AND OFFERS AN EXCELLENT OPPORTUNITY TO MAKE GOOD MONEY.

The respondent hereby admits:

That persons without previous experience are not hired to perform detective work, and that the demand for detectives does not exceed the supply;

That this school does not secure employment for its students while studying the course;

That the National Detective System is an individual proprietorship without a "President" or "principals";

That the credential of introduction furnished students merely advises that such students are studying this course;

That to make one a successful detective, certain individual talents are required which cannot be supplied by this course;

That the detective profession has been practiced for centuries;
That the National Detective System is not rated as "one of the leading schools in the United States";

That no assurance can be given that the reading of these lessons will enable everyone to make more money or become a success;

That a profit is realized on the sale of this course at \$2.00;

That the offer of this course at \$2.00 is a continuing offer, made to an unlimited number of prospects.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That men and women are in demand everywhere for secret investigation and confidential work;

(b) That experience is unnecessary to be a successful detective;

(c) That everyone will succeed in the detective profession;

(d) That detective work is secured for students while still taking the course, or that such work may be in sufficient quantity to enable the student to earn more than his tuition while studying the course;

(e) That business is never dull in the detective profession, or that the latter is never affected by hard times, lay-offs, droughts, floods or depression;

(f) That Frank S. Perkins or any other individual is "President" of the National Detective System;

(g) That anything is furnished as "A very special offer" unless and until the terms of such offer justify the use of such terminology;

(h) That after learning each lesson, one is fully equipped to do actual detective work;

(i) By direct statement or by reasonable inference, that one cannot secure a position in the detective field unless he has taken such training as this;

(j) That "credential of introduction" given students will be the means of placing one in close touch with officers of the law, business men, heads of corporations, etc., or that such students will thereby receive first hand information while pursuing their studies;

(k) By direct statement or by reasonable inference that this course will make a successful detective of everyone who studies it;

(l) That the detective profession is young, or that there are very few trained detectives;

(m) That the staff of this system includes several "principals";

(n) That detectives who graduate from this institution are never poor;

(o) That the National Detective System is one of the leading schools in the United States;

(p) That this institution gives a "special training that will make you successful and happy";

(q) That the testimony of detectives in courts of law is trusted more than that of anyone else;

(r) That everyone respects and admires the detective socially;

(s) That enrolling for a course similar to this is "the one sure way of getting ahead";

(t) That after reading these lessons, one—

1. "Will earn more money"

2. "Will become a successful man or woman", or

3. Will become "the envy of all your friends";

(u) That this school is not making any profit when selling its course for \$2.00;

(v) That the course is offered at \$2.00 to only a certain number of deserving students, or that such offer will be withdrawn if not accepted immediately;

and from making any other claims or assertions of like import. (Sept. 17, 1936.)

01489. Vendor-Advertiser—Medicinal Preparations.—Laboratories, Inc., a corporation, Kansas City, Mo., vendor-advertiser, is engaged in selling certain medicinal preparations designated—

Precision Vapor Balm,

Precision Stimulating Tonic Compound,

Precision Laxative Cold Tablets,

Precision Cervikaps,

Precision Periodic Relief Compound,

Ultrahealth Periodic Relief Compound Tablets,

Precision Vaginal Jelly,

Precision Meno-Pain Tablets,

Precision Antiseptic Douche Tablets,

Precision Oralthroseptie,

Precision Laxative Regulators,

Ultra Health Rheumatic Compound,

Prescription No. 36 Special Formula Rheumatism Eliminant,

and in advertising represented:

USE PRECISION BALM. For colds, chest and throat * * * burns * * * rheumatic pains, sciatica or lumbago.

Precision Douche Tablets are mild, yet with sufficient germ-killing power to assure protection.

ULTRAHEALTH VAGINAL JELLY. To obtain the best results with Ultrahealth Vaginal Jelly unscrew cap and replace with the metal applicator. Insert into the vagina to a depth of 2½ to 3 inches. Do not insert too far as it is possible to get the medication beyond the point where it is most efficient.

After inserting the applicator, simply squeeze about as much of the jelly as you would use of toothpaste, or one full turn of the key. Within a few minutes the warmth of the body will melt it and it will start its healing protective work.

ULTRAHEALTH Antiseptic Douche Tablets are mild, yet with sufficient germ killing power to assure her that germ life in the vagina after menstruation or other functions of the normal married woman will be completely destroyed.

One tablet of **ULTRAHEALTH** Antiseptic Douche Tablets to a quart of luke warm water makes a douche of sufficient strength to assure safety from germ life.

TONIC COMPOUND TABLETS. These tablets are especially formulated for the man or woman who feels worn out, listless and lack their old pep, vigor and vitality. If you feel old before your time there is nothing that will build you up and enable you to enjoy all the pleasures of life as these tablets will. Treatment should be continued until normal functions of the body have been fully restored * * * Persistent treatment combined with care of every day living will restore you to your normal health, and enable you to perform the duties and activities of a normal life.

PRECISION REGULATORS * * * Regulation with **PRECISION LAXATIVE CATHARTICS** acts directly on the liver, gall bladder and lower bowels * * * In severe cases of acute constipation and where a radical cathartic is necessary, three tablets should be taken at bed time. For ordinary regulation one tablet upon retiring is sufficient. This will give a normal bowel action.

ULTRAHEALTH PERIODIC RELIEF COMPOUND TABLETS—TRIPLE STRENGTH. This prescription has corrected many obstinate and abnormal cases of delayed Menstruation in a few hours time without harm, inconvenience or delay from work or other activities.

In all cases of rheumatism our **ULTRA HEALTH RHEUMATIC COMPOUND** will give you relief and bring you the health so much desired by you.

* * * **PRECISION RHEUMATIC TABLETS * * *** contain no narcotics, opiates or other habit forming drugs, and are perfectly safe.

PRECISION TONIC COMPOUND * * * has been carefully worked out so that it supplies just those things which are the most needed to replenish the vital elements used up so rapidly in our modern ways of living.

ULTRAHEALTH PERIODIC RELIEF COMPOUND TABLETS—DOUBLE STRENGTH. This prescription has corrected many obstinate and abnormal cases of delayed Menstruation in a few hours time without harm.

Let **CERVIKAPS** Safeguard your health, insure your happy frame of mind and preserve your youthful charm. With **CERVIKAPS YOU WILL** have no more worries over the personal hygiene problem.

Perhaps the most common form of Feminine Hygiene is the use of a vaginal jelly. **PRECISION VAGINAL JELLY** has been in use many years by Clinics and by physicians in their private practice. There is no odor, fuss or rush. Bodily warmth causes it to melt within a few minutes and begins its healing, penetrating and protective work.

The formula from which **PRECISION VAGINAL JELLY** is compounded has been found to be the most efficient combination of medication for its purpose. Thousands of women all over the country are adopting this fine Feminine Hygiene product.

PRECISION ANTISEPTIC DOUCHE tablets easily prevent the use of improper strength solutions. * * * The strength has been carefully tested. You receive the product of experts—the perfect douche tablet. It fills your needs entirely.

The respondent hereby admits:

That the therapeutic properties of Precision Vapor Balm would not constitute such preparation a competent treatment for sciatica, lumbago, headaches, skin irritations or colds;

That the ingredients of Precision Stimulating Tonic Compound are not such as would replenish vital elements used up by the body, restore normal functions of the body or act to rejuvenate the body;

That the therapeutic value of Precision Laxative Cold Tablets would be limited to the value of such tablets as a laxative, and such tablets could not be depended upon as a treatment for colds or serious conditions arising from colds;

That Precision Cervikaps would not constitute a competent contraceptive or a perfect antiseptic; nor could such preparation be depended upon to correct the causes or results of incorrect feminine hygiene;

That Precision Periodic Relief Compound or Ultrahealth Periodic Relief Compound Tablets would not be competent to produce abortion except in a limited number of cases, relieve obstinate or abnormal cases of delayed menstruation; nor could such preparations be warranted as harmless or non-irritating in all cases;

That Precision Vaginal Jelly would not constitute a competent contraceptive, nor would the warmth of the body start its healing "protective" work;

That the therapeutic properties of Precision Meno-Pain Tablets would not constitute such tablets as being competent to relieve or control pain during the menstrual period;

That Precision Antiseptic Douche Tablets would not constitute a competent antiseptic; nor are the therapeutic properties of said tablets such that while being mild they yet possess sufficient germ killing power to assure safety and protection;

That Precision Oralthroseptic would not constitute a competent treatment for hay fever, sinus infection, tonsilitis, spongy or bleeding gums, sore throat, or halitosis; nor is such preparation a competent treatment for acute constipation, dizziness, biliousness or sluggishness, irrespective of the cause of such conditions;

That Ultra Health Rheumatic Compound or Prescription No. 36 Special Formula Rheumatism Eliminant would not constitute a competent treatment for rheumatism, sciatica, lumbago or similar disorders; nor would such preparation strike at the causes of such disorders;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Precision Vapor Balm is a competent treatment for sciatica, lumbago, headaches, skin irritations or colds of any kind;

(b) That Precision Stimulating Tonic Compound will supply the things most needed to replenish vital elements used by the body or restore the normal functions of the body, or build up those feeling old before their time and enable them to enjoy all the privileges of life;

(c) That Precision Laxative Cold Tablets are a competent treatment for or will prevent colds, or serious conditions such as influenza or pneumonia arising from colds; or that such tablets will act as a tonic or break up colds;

(d) That Precision Cervikaps is a perfect antiseptic or a competent contraceptive; or will correct the cause or results of incorrect feminine hygiene; or will bring health, happiness and joy of living; or relieve worry, suffering or misery;

(e) That Precision Periodic Relief Compound or Ultrahealth Periodic Relief Compound tablets—Triple Strength—will correct obstinate or abnormal cases of delayed menstruation, or produce abortion unless qualified by the statement that such is true in only a limited number of cases; or that such preparations are harmless, or non-irritating to the most delicate system;

(f) That Precision Vaginal Jelly is a competent contraceptive or that the warmth of the body will start its healing protective work;

(g) That Precision Meno-Pain Tablets will relieve or control pain during the menstrual period;

(h) That Precision Antiseptic Douche Tablets are a competent contraceptive; or are mild yet possess sufficient germ killing power to assure safety and protection;

(i) That Precision Oralthroseptic is a competent treatment for hay fever, sinus infection, tonsilitis, spongy or bleeding gums, sore throat, or halitosis, or is antiseptic under the conditions of its use;

(j) That Precision Laxative Regulators are a competent treatment for acute constipation, dizziness, biliousness, or sluggishness, irrespective of the cause of such conditions;

(k) That Ultra Health Rheumatic Compound or Prescription No. 36 Special Formula Rheumatism Eliminant will give health or bring relief in all cases of rheumatism, or constitute a competent treatment for rheumatism, sciatica, lumbago, or similar conditions, or strike directly at the conditions which cause rheumatic disorders;

and from making any other claims or assertions of like import.

Respondent further agrees and stipulates to cease and desist from using the words "Stimulating Tonic", "Meno-Pain," "Oralthroseptic", and "Eliminant" in the trade name or in connection with the sale and advertising of its products designated respectively "Precision Stimulating Tonic Compound," "Precision Meno-Pain Tablets," "Precision Oralthroseptic," and "Prescription No. 36 Special Formula Rheumatism Eliminant." (Sept. 21, 1936.)

01490. Vendor-Advertiser—Fur Coats.—Frank R. Jelleff, Inc., a corporation, Washington, D. C., vendor-advertiser, is engaged in selling fur coats and fur trimmed coats, and in advertising represented:

Vicuna Fox
Kid Caracul
Caracul Kid
China Kid Caracul
French Beaver
Fisher Fitch

The respondent hereby admits:

That the furs in its fur coats and fur trimmed coats are not taken from the animals designated in its advertisements, but that said furs are from animals other than those designated and are dressed or dyed to simulate or resemble the furs of the animals indicated in its advertisements.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise

(a) Describing furs in any other way than by the use of the correct name of the fur as the last word of the description, and when any dye or blend is used simulating another fur the true name of the fur appearing as the last word of the description must be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur;

(b) Representing that Vicuna fur dyed or dressed to resemble or simulate the fur of the Fox is "Vicuna Fox";

(c) Representing that kid, young goat, dyed or dressed to resemble or simulate Caracul is "Kid Caracul", "Caracul Kid", or "China Kid Caracul";

(d) Representing that coney (rabbit), dyed or dressed to resemble or simulate the fur of the Beaver is "French Beaver";

(e) Representing that Fitch fur dyed or dressed to resemble or simulate the fur of the Fisher is "Fisher Fitch";

(f) Using the word "China" in connection with the word "Caracul" to describe or designate the name or any fur or fur garment;

(g) Using any geographical term to describe a fur unless such fur actually comes from the region indicated or implied;

and from making any other claims or assertions of like import. (Sept. 21, 1936.)

01491. Vendor-Advertiser — Medicinal Preparations.— Rudolph Blank, doing business under the trade name of Golden Youth, New York, N. Y., vendor-advertiser, is engaged in selling certain articles of commerce designated:

STIMULAX
GLANTONIC
VEGETONIC
MINUTE FACIAL
TONIC CLEANSER
SKIN BALM
NATUROUGE

and in advertising represented:

I consider STIMULAX the safest and mildest system cleanser I ever tried
* * * since using STIMULAX, I have no more trouble.

STIMULAX Natural System Cleanser.

GLANTONIC builds resistance.

MINUTE FACIAL corrects wrinkles.

MINUTE FACIAL removes wrinkles.

NATUROUGE sugarless candy brings color to cheeks and lips.

STIMULAX keeps system clean.

VEGETONIC * * * one pound of these fine flakes equals 26 pounds of fresh vegetables.

VEGETONIC promotes health and a youthful complexion from within.

VEGETONIC * * * Unique "Beauty Food" for the preservation and restoration of a CLEAR COMPLEXION and GENERAL HEALTH.

STIMULAX superior *herbal* system cleanser and digestant.

TONIC CLEANSER for face and neck recreates natural beauty of skin, reduces large pores.

SKIN BALM * * * prevents wrinkles.

The respondent hereby admits:

That, according to the weight of scientific opinion, there is no known product which is a "system cleanser" or will clean the digestive tract, or which merits the designation "digestant";

That, according to the weight of scientific opinion, there is no known plant or mixture of plants which can be truthfully represented as a gland tonic, or which is effective for glandular deficiency and to build up resistance against disease;

That, according to the weight of scientific opinion, there is no known product which acts as a tonic on the skin, or recreates natural beauty of skin, or corrects, removes or prevents wrinkles;

That, while Vegetonic may have some beneficial effect on the user, it cannot always be relied upon to promote health and a youthful complexion from within, or to preserve and restore clear complexion and general health.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "since using Stimulax, I have no more trouble."

(b) That Stimulax

1. Is a natural system cleanser;
2. Keeps the system clean;
3. Is a superior herbal system cleanser; or
4. Is a digestant;

(c) That Glantonic

1. Is a gland tonic; or
2. Builds resistance against disease;

(d) That Minute Facial corrects or removes wrinkles;

(e) That Naturouge brings color to cheeks and lips;

(f) That one pound of Vegetonic fine flakes equals 26 pounds of fresh vegetables;

(g) That Vegetonic

1. Is a tonic;
2. Promotes health and a youthful complexion from within;
3. Is a "beauty food"; or
4. Preserves and restores clear complexion and general health;

(h) That Tonic Cleanser for face and neck

1. Recreates natural beauty of skin;
2. Reduces large pores; or
3. Is a tonic;

(i) That Skin Balm prevents wrinkles;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using misleading names, such as "Glantonic", or "Tonic Cleanser", to designate his products. (Sept. 23, 1936.)

01492. Vendor-Advertiser—Medicinal Preparation.—I. M. Silverberg, an individual, doing business under the trade name of The Roxol Co., St. Louis, Mo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Roxol, and in advertising represented:

Sufferers of
Psoriasis—Eczema
and Kindred
Skin Diseases

Rid yourself of unsightly scaly red blotches. Nothing more beautiful than clear healthy skin. Yours for the asking.

PSORIASIS,
ECZEMA

Also Known as Tetter, Pruritus, Milk Crust,
Weeping Skin, Water Poison, etc.

and
Kindred Skin Disorders

and the

POSITIVE

GUARANTEED RELIEF.

Works Wonders in the Treatment of These Two Previously Baffling Skin Disorders That Are So Unsightly and Cause Undue Agony.

ATHLETE'S FOOT AND RINGWORM

These skin disorders of the face, scalp, hands and feet are quite prevalent and yield quickly to ROXOL, due to its penetrative and healing qualities.

Itching, unsightly sores of these skin ailments are quickly and soothingly relieved by the use of ROXOL, and your skin takes on its normal texture and natural color without leaving unsightly scars or blemishes.

* * *. Whether your ailment is of recent origin or of long obstinate duration, give ROXOL your confidence and we are sure that your desire to find a relief is right at hand. Its responsiveness will amaze you as it has others.

You have indicated that you are bothered with a skin ailment such as Psoriasis, Eczema, Tetter, Pruritus, Milk Crust, Weeping Skin, Water Poison, or kindred skin diseases. I have the answer for this in RoXol, a product that has proved to give relief.

The respondent hereby admits:

That according to scientific opinion Roxol is not a competent remedy or effective treatment for Eczema and Psoriasis and kindred skin diseases;

That according to scientific opinion Roxol is not a competent remedy or effective treatment for Athlete's Foot or Ringworm;

That Roxol will not give sure, positive or guaranteed relief in cases of Psoriasis or Eczema of long standing, and where all other remedies have failed.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulated and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Roxol is a competent remedy or effective treatment for Eczema or Psoriasis and kindred irritating skin ailments;

(b) That Roxol is the new proven relief for Eczema and Psoriasis and kindred irritating skin diseases;

(c) That anyone may have clear healthy skin by using Roxol;

(d) That Roxol will give sure relief in cases of long standing where all other remedies have failed;

(e) That Roxol will get rid of the unsightly scaly red blotches of sufferers of Psoriasis and Eczema and kindred skin diseases, leaving the skin beautifully clear and healthy;

(f) That one need suffer no more with Psoriasis, Eczema, and kindred skin disease since Roxol the newest two weeks harmless treatment gives 100% positive relief;

(g) That Roxol will give positive guaranteed relief;

(h) That Roxol works wonders in the treatment of Psoriasis and Eczema;

(i) That Athlete's Foot and Ringworm yield quickly to Roxol;

(j) That itching and unsightly sores caused by Psoriasis and Eczema are quickly and soothingly relieved by the use of Roxol and the skin takes on its normal texture and natural color without leaving unsightly scars and blemishes;

(k) That respondent makes a special offer of \$3.00 for his product for a limited time;

and from making any other claims or assertions of like import. (Sept. 24, 1936.)

01493. **Vendor-Advertiser—Developing Exercises.**—The Elizabeth Towne Co., Inc., a corporation, Holyoke, Mass., vendor-advertiser, is engaged in selling a product designated "Regeneration Series," including 12 Yogi Developing Exercises for revitalizing mind and body, and in advertising represented:

"WHY RESORT TO GOAT GLANDS OR RADIO WAVES? Bernarr McFadden (in Liberty) says using goat glands or 'rays' to retard old age brings only temporary results. We agree. There is a better way. Nature herself has provided ways by which LIFE may be used to retard old age. THESE METHODS BROUGHT RADIANT HEALTH AND VITALITY. THE REGENERATION SERIES is a course of lessons that shows a practical way to get new life, and vitality. It includes '12 Yogi Developing Exercises.' When the author began these methods he was a chronic invalid—could not walk $\frac{1}{4}$ mile. 'Now,' he says, 'I can walk 20 miles. Tremendous and vital changes came to me through using these methods'."

The respondent hereby admits:

That proof has not been furnished that the exercises or course of lessons set forth in said regeneration series will either retard old age or bring one radiant health or new life, or cause tremendous or vital changes in chronic invalids.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's regeneration series will retard old age and one need not resort to goat glands or radio waves for that purpose;

(b) That respondent's regeneration series brings radiant health, vitality and new life to its students;

(c) That respondent's regeneration series will bring about tremendous and vital changes in chronic invalids;

and from making any other claims or assertions of like import. (Sept. 24, 1936.)

01494. **Vendor-Advertiser—Parachutes.**—V. E. Thompson, an individual trading as Thompson Bros. Balloon and Parachute Co., Aurora, Ill., vendor-advertiser, is engaged in selling parachutes, and in advertising represented:

Parachutes, approved types, Navy surplus * * *

Thompson Brothers Balloon and Parachute Company.

The respondent hereby admits:

That the parachutes have not been officially approved by any Governmental agency, neither were they purchased from the United States Navy, nor are they of surplus stock of the United States Navy.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the parachutes have been approved by any Governmental agency;

(b) That the parachutes are of Navy surplus;
and from making any other claims or assertions of like import. (Sept. 29, 1936.)

01495. **Vendor-Advertiser—Washing Fluid.**—Randolph A. Menefee, an individual, doing business under the trade name of Khylex Chemical Co., Chevy Chase, Md., vendor-advertiser, is engaged in selling a washing fluid designated Khylex, and in advertising represented:

To remove stains * * * If brown spots are left, sometimes after removing ink spots, apply a few drops of vinegar and spots will disappear.

To renew old painted woodwork, floors, etc., use a solution of KHYLEX with equal parts of warm water, wash with a sponge till the new-like paint or polish will appear.

As a Germicide and Deodorant. A solution of KHYLEX with $\frac{3}{4}$ water will make a germicide and deodorant to spray in a sick room, water closet, cellar and other places where such is needed.

The respondent hereby admits:

That although Khylex will remove some stains from certain fabrics, Khylex followed by vinegar may not completely remove printer's ink stains;

That Khylex may brighten up the appearance of painted woodwork or floors, but it will not renew old painted woodwork, where the paint film has broken down considerably or the floor surface is badly worn;

That Khylex will not act as a germicide and deodorant unless the room or object be thoroughly cleansed before applying Khylex.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Khylex, followed by vinegar will remove all kinds of ink spots;

(b) That Khylex will "renew" old painted woodwork, floors, etc.;

(c) That Khylex will act as a germicide or deodorant, unless the direction for its use indicates that the room or object must be first thoroughly cleansed before application of Khylex;

and from making any other claims or assertions of like import. (Sept. 30, 1936.)

01496. **Vendor-Advertiser—Vitamin Concentrate.**—The Malone Oil Co., a corporation, Cleveland, Ohio, vendor-advertiser is engaged in selling a product designated Vitachix, and in advertising represented:

It is the richest known source of VITAMINS A and D—the vitamins that build up resistance against disease, prevent leg weaknesses, eliminate thin shelled eggs and improve hatchability.

The poultrymen's troubles disappear promptly after feeding this rich pure oil.

You, too, can have chicks that lay golden eggs—chicks that bring you new money each day. Simply feed them MALONE'S VITACHIX COD LIVER OIL—the vitamins that promote growth, build up resistance against disease, prevent leg weaknesses, eliminate thin shelled eggs and improve hatchability.

Most of the poultrymen's troubles disappear promptly after feeding VITACHIX. It improves the health of the flock, makes stronger chicks, better layers and the money you spend for VITACHIX will come back to you manifold in increased production, better quality eggs and healthier birds.

VITACHIX COD LIVER OIL is a pure tested oil of the highest vitamin content. We guarantee 700 units per gram Vitamin A and 150 units per gram Vitamin D, which assures you of the richest and most potent oil on the market.

The results are so wonderful that any poultryman who fails to use it is practically throwing money away.

The respondent hereby admits:

That, while Cod Liver Oil supplies vitamins A and D, the only virtue that can be properly attributed to this oil is related to the physiological action of these vitamins;

That cod liver oil is not the richest known source of vitamins A and D, but there are other fish oils which greatly exceed cod liver oil in vitamin potency;

That there are a great many diseases of chickens that are unrelated to vitamins A and D ingestion and for which any ration containing said vitamins would have no beneficial effect;

That there are types of leg weakness due to nutritional deficiencies which are in no way related to the quantity of Vitamin D that may be consumed by growing chicks;

That thin-shelled eggs and poor hatchability may be due to causes other than a deficiency of Vitamins A and D in the ration;

That a guarantee of 700 units of Vitamin A per gram and 150 units of vitamin D per gram does not represent the richest and most potent cod liver oil on the market, but there are other cod liver oils on the market whose vitamin potency exceeds these figures to a considerable extent.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vitachix Cod Liver Oil is the richest known source of vitamins A and D;

(b) That feeding Vitachix Cod Liver Oil to chickens

1. Builds up resistance against disease;
2. Prevents leg weakness;
3. Eliminates thin-shelled eggs;
4. Improves hatchability;
5. Promotes growth;
6. Improves health;
7. Makes stronger chicks; or
8. Makes better layers;

(c) That the poultryman's troubles disappear promptly after feeding this rich pure oil;

(d) That the money spent for Vitachix Cod Liver Oil will come back manifold in increased production, better quality of eggs and healthier birds;

(e) That a guarantee of 700 units per gram vitamin A and 150 units per gram Vitamin D assures the richest and most potent oil on the market;

(f) That the poultry man who fails to use Vitachix Cod Liver Oil is practically throwing his money away; and from making any other claims or assertions of like import. (Sept. 30, 1936.)

01497. **Vendor-Advertiser—Imitation Marble.**—W. T. Grinstead, an individual trading as Rapid Marbleizing Service, Edwardsville, Ill., vendor-advertiser, is engaged in selling instructions and formula for the manufacture of imitation marble, and in advertising represented

* * * Liquid Marble * * * excels almost any other material for the reproduction of statuary * * *

* * * Liquid Marble may be used wherever marble is used in building * * *

* * * any surface is PERMANENTLY beautiful with this process at a cost less than good paint * * *

* * * NO EXPERIENCE NEEDED * * *

SPECIAL 30-DAY OFFER!—ANY one set of instructions described in the enclosed literature sent for Only \$1.00—ANY Three sets for \$2.00. ANY five sets, \$3.25. All nine sets for * * * \$5.00 * * *

* * * All Nine Sets for \$5.50 on Time Payments; or only \$5.00 for All Nine Sets if you want to pay in full when you order * * * To make sure you will secure the Complete Set of Instructions at our Special 30-Day Price, you may send us only \$1.00 now to secure an option on the course. The Balance of \$4.50 may be paid at any time in the future, and the Complete Set of Instructions will be sent to you. However, we will send you the LIQUID MARBLE instructions as soon as we receive the \$1.00 deposit, instead of forcing you to wait until the full balance is paid before sending any sets of instructions as is usually done by other firms. This way, you at once receive full value for the dollar sent and it also insures you obtaining the remaining instructions at the special price * * *

The respondent hereby admits:

That other compositions are as suitable in the reproduction of statuary as compositions manufactured by use of respondent's instructions and formula;

Architects would hardly recommend a composition manufactured by use of respondent's instructions and formula for floor materials instead of genuine marble;

That while a composition manufactured by use of respondent's instructions and formula might prove cheaper when used for some surfaces, such would not be the case in most instances;

That a very skilled workman with considerable experience would be required in the manufacture of compositions by use of respondent's instructions and formula if satisfactory and appealing results are to be expected;

That the offer mentioned in the advertising was not a special offer nor was it limited to a period of thirty days.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the composition "liquid marble" manufactured by use of respondent's instructions and formula, "excels almost any other material for the reproduction of statuary";

(b) That the said composition "may be used wherever marble is used in building";

(c) That "any surface is permanently beautified with this process at a cost less than good paint";

(d) That "no experience is needed" in the manufacture of imitation marble by use of respondent's instructions and formula;

(e) That any offer is a "special 30-day offer" or limited to any period of time unless a definite time limit is set and offers to purchase received after the expiration of such time are refused;

and from making any other claims or assertions of like import. (Sept. 30, 1936.)

01498. Vendor-Advertiser—Hair Dye.—The Empire Regenerator Co. Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a hair dye designated The Empire Hair Regenerator, and in advertising represented:

Remove gray hair. Restore the original color to your hair at once, and look 10 years younger.

It restores gray and faded hair. It is odorless and colors the hair instantly and does not rub off.

It is not effected by baths of any kind.

Don't let your hair turn gray.

Instantly restores gray and faded hair to its original shade and luster.

The respondent hereby admits:

That said product will not remove gray hair or restore the original color, shade or luster to hair;

That said product will not prevent hair from turning gray.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product will remove gray hair or restore the original color, shade or luster to hair;

(b) That said product will prevent hair from turning gray;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using the words "Hair Regenerator" in furtherance of the sale of its product. (Sept. 30, 1936.)

01499. Vendor-Advertiser—Medicinal Preparation.—S. L. Doster, an individual operating as Doster & Co., Chicago, Ill., vendor-advertiser, is engaged in selling an alleged treatment for psoriasis, eczema, etc., designated Doster Ointment, and in advertising represented:

It certainly ought to have been named MIRACLE OIL because it acts so quickly and is so soothing and healing.

I have had Psoriasis for over 20 years. Have tried everything I heard of and spent many a dollar, but never found anything that gave any sign of a cure until I used your treatment.

For 12 years I had suffered from Psoriasis. * * * I am on my second order already; my skin has healed soft and clear, no itch—what relief, I can't express. It is the most wonderful remedy I have ever seen. My doctors could not cure me of this dreadful eruption.

Only two of your treatments were required to do the work that other so-called remedies for Psoriasis did not seem to touch. And I believe I tried them all.

It has proven most effective in its action against the most stubborn and obstinate cases of Psoriasis, regardless of the age of the affliction.

Soothing, healing and antiseptic, the action of this ointment is twofold. First, it gives almost instant and immediate relief to the torturing, burning and itching. Secondly, and most important, it penetrates the skin quickly, causing the scales to disappear, the red blotches to fade out, and the skin to regain its normal texture.

Psoriasis—scaly skin has been conquered. No matter how long you have suffered, others who have been worse now praise the marvelous healing action of the Doster Skin Treatment. Proven effective in the most stubborn cases, its results are guaranteed.

Psoriasis, scaly skin. This stubborn distressing disease yields quickly to the positive action of the proven Doster Treatment.

Scaly skin Psoriasis, Eczema and other skin diseases quickly yield to Doster Treatment.

It has been tested and proven a positive remedy for the relief of Psoriasis.

It does not merely relieve the burning and itching. It causes the scales to disappear, the rash to heal, and the skin to regain its normal healthy texture.

The respondent hereby admits:

That according to the weight of scientific authority, while Doster's Ointment may tend to relieve the itching and discomfort associated with certain skin diseases and eruptions, it cannot be relied upon as a competent remedy in the treatment of Eczema or Psoriasis.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Doster's Ointment should have been named "Miracle Oil" because it acts so quickly and is so soothing and healing;
- (b) That Doster's Ointment has proven most effective in its action against the most stubborn and obstinate cases of Psoriasis, regardless of the age of the affliction;
- (c) That Doster's Ointment is healing or antiseptic;
- (d) That Doster's Ointment
 - 1. Penetrates the skin quickly;
 - 2. Causes scales to disappear;
 - 3. Causes red blotches to fade out, unless qualified by the statement that it cannot be relied upon to do this in all cases; or
 - 4. Causes the skin to regain its normal texture, unless qualified by the statement that it cannot be relied upon to do this in all cases;
- (e) That Doster's Ointment
 - 1. Will "cure" Psoriasis; or
 - 2. Has "conquered" Psoriasis or scaly skin;
- (f) That the results of Doster's Ointment are "guaranteed";
- (g) That Psoriasis, Scaly Skin, Eczema and other skin diseases yield quickly to Doster Ointment;

and from making any other claims or assertions of like import. (Oct. 5, 1936.)

01500. Vendor-Advertiser—Washing Fluid.—Charles F. Slade Co., Inc., a corporation, Buffalo, N. Y., vendor-advertiser, is engaged in selling a certain preparation designated S-K-O Slade's Solution, and in advertising represented:

Wonderful for washing and *sterilizing* baby's diapers.
Toilet bowls * * * sterilizes and deodorizes.

The respondent hereby admits:

That according to scientific opinion respondent's product cannot be relied upon to sterilize baby's diapers, toilet bowls, or any other object, since it will not kill all germs including their spores.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That respondent's product will sterilize baby's diapers, toilet bowls, or any other object;

and from making any other claims or assertions of like import. (Oct. 6, 1936.)

01501. Vendor-Advertiser—Medicinal Preparation.—J. J. Preo, an individual trading as J. J. Preo & Co., Blaine, Wash., vendor-advertiser, is engaged in selling a certain product designated Magic Skin Remedy, and in advertising represented:

The new discovery—MAGIC SKIN REMEDY—for Itch, Eczema, Ringworm, Impetigo, Itching Scalp, Poison Ivy, Insect Bites and all skin disorders. INSTANT RELIEF!

Give Magic Skin Remedy one trial and you will never suffer from skin disorders again.

Wonderful new Magic Skin Remedy gives instant relief to sufferers from Eczema, Ringworm, Poison Oak, Poison Ivy, Insect Bites and many other skin disorders.

The respondent hereby admits:

That, according to the consensus of reliable medical opinion, Magic Skin Remedy does not constitute an adequate treatment for eczema, itch, impetigo, itching scalp, insect bites; and its value as a remedy for ringworm, poison oak, poison ivy and other skin disorders is limited;

That it is not a new discovery or a "magic" skin remedy and will not give instant relief, nor prevent the return of skin disorders.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent remedy in the treatment of:

1. Itch,
2. Eczema,
3. Impetigo,
4. Itching scalp,
5. Insect bites,
6. All skin disorders;

(b) That said preparation is a competent treatment or effective remedy in all cases of ringworm, poison oak, or poison ivy;

(c) That said preparation is a new discovery, or will give "instant" relief;

(d) That the use of said preparation will prevent the return of skin disorders;

and from making any other claims or assertions of like import. (Oct. 5, 1936.)

01502. Vendor-Advertisers—Medicinal Preparation.—Fred S. Hirsch and William W. Hirsch, copartners, operating under the firm name of Innerclean Manufacturing Co., Los Angeles, Calif., vendor-advertisers, are engaged in selling a medicinal preparation designated Innerclean Intestinal Laxative, and in advertising represented:

SASSAFRAS Memories of childhood recall this beneficial herb * * * its fragrant and refreshing scent—purifying to the blood and long recommended as a wholesome springtime tonic.

Buchu leaves are highly efficacious in the relief of catarrhal conditions and inflammation of the kidneys.

Attacks of indigestion usually made known by an acid stomach are nature's signs that something is wrong with your system. If not quickly remedied, it may lead to ulcers, colitis, diabetes, Brights disease and other serious ailments.

Stop Suffering from STOMACH TROUBLE. Innerclean Intestinal Laxative has proved successful in overcoming irritations and inflammation of the entire digestive and intestinal tract. Don't temporize with stomach trouble. Serious complications may follow.

Progressively and Thoroughly Cleanses and Rejuvenates Relaxed, Flabby Intestines Thereby Restoring Them to Normal Activity.

Sweep Disease From Your System.

Since using it have been free of all ailments, and now enjoy perfect health, for which I thank Innerclean.

CURED CHRONIC CONSTIPATION.

WHY Be OLD? Defer "OLD AGE."

* * * free from chemicals and drugs * * *.

The respondents hereby admit:

That although "Innerclean" will be of some benefit by stimulating peristalsis, it does not constitute a competent treatment or an effective remedy for chronic constipation or conditions associated therewith;

That such a preparation cannot purify the blood;

That although this preparation will tend to act as a mild diuretic, its action on the kidneys is limited thereto;

That no single preparation is recognized as a competent treatment or an effective remedy for all forms of stomach trouble;

That Innerclean contains no drug or combination of drugs recognized as capable of overcoming irritations and inflammation of the entire digestive and intestinal tract;

That there is nothing in this preparation which will relieve excessive acidity;

That the weight of medical authority does not agree that old age is caused by constipation;

That only nature can "cure" any difficulty.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said

product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "Innerclean" is a competent treatment or an effective remedy for constipation, unless limited to the relief of simple or temporary constipation;

(b) That the use of "Innerclean" will assure one of good health or enable him to "join the health parade";

(c) That "Innerclean" or any of its constituent products will—

1. Purify the blood,
2. Relieve catarrhal conditions,
3. Have any action on the kidneys except that of a mild diuretic only;

(d) That this preparation will prevent, or remedy conditions leading to—

1. Ulcers,
2. Colitis,
3. Diabetes,
4. Bright's disease, or
5. Other serious ailments;

(e) That this product is a competent treatment or an effective remedy for "stomach trouble";

(f) That "Innerclean" will overcome irritations and inflammation of the entire digestive and intestinal tract;

(g) That this commodity will "banish" the misery of chronic constipation, or any other difficulty;

(h) That the use of this preparation will eliminate—

1. Gas on the stomach,
2. Belching,
3. Bloating,
4. Burning pains, or
5. "All other disagreeable discomforts that are yours with gas on the stomach";

(i) That unless the intestinal tract is kept clean, one's life and health are in danger;

(j) That "Innerclean" relieves excess acidity;

(k) That "Innerclean" cleanses and/or rejuvenates relaxed, flabby intestines, or restores them to normal activity;

(l) That this preparation will sweep disease from your system;

(m) That "Innerclean" will—

1. Have a rejuvenating effect on the bowels,
2. Restore healthy, natural regularity of the bowels, or
3. Prevent most serious ailments;

(n) That "Innerclean" is a competent treatment or an effective remedy for "intestinal indigestion";

(o) That the Irish Moss contained in this preparation supplies elements seriously lacking in the modern diet;

(p) That the Sassafras contained in "Innerclean" constitutes a corrective of unhealthy conditions or a tonic;

(q) That "Innerclean" or the Senna therein contained—

1. Cleanses the colon,
2. Is mild, or
3. Stimulates digestive action;

(r) That the use of "Innerclean" will keep one free of all ailments, or enable one to enjoy perfect health;

(s) That "Innerclean" constitutes a "cure" for any condition;

(t) That the use of this preparation will defer old age;

(u) That age is the direct result of overloading the body with toxic wastes and poisoning, caused by constipation;

(v) That "Innerclean" contains no drugs;

and from making any other claims or assertions of like import. (Oct. 5, 1936.)

01503. Vendor-Advertiser—Medicinal Preparation.—Dr. O. A. Johnson, an individual, Kansas City, Mo., vendor-advertiser, is engaged in selling a medicinal preparation designated Dr. Johnson's Rectal Ointment, No.'s 1, 2, 3, 4, 5, Dr. Johnson's Laxative Tablets, and Dr. Johnson's Private Formula Tablets, and in advertising represented:

* * * *Invariably*, the piles are internal and the miserable itching outside the anus permits the sufferer very little rest particularly during the night. * * *
DO NOT LET ANOTHER DAY GO BY without making the first step on your part toward securing relief and the *assurance of better health* to which you are rightfully entitled.

X Ray showed partial closure because of colon collapsing at last bend and without the easy treatments from you dont think there is any doubt but *an operation would have been necessary*. As it is I am now entirely relieved, and you may tell anyone suffering as I was to write me if any doubt is shown as to the benefits your treatments offer.

The respondent hereby admits:

That these preparations are of benefit only in cases of relievable, reducible piles, and not where surgical operations are indicated;

That itching piles may be either internal or external;

That better health cannot be "assured" by the use of any such preparation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the various preparations comprising this treatment constitute a competent treatment or an effective remedy for piles unless limited specifically and clearly to the relief of cases of relievable, reducible piles only;

(b) That itching piles are invariably internal;

(c) That the use of these preparations will grant "assurance of better health;"

(d) That these preparations will relieve cases in which an operation would otherwise be necessary;

and from making any other claims or assertions of like import. (Oct. 12, 1936.)

01504. Vendor-Advertiser—Chemical Preparation.—Enoz Chemical Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a chemical preparation designated Enoz Moth Spray, and in advertising represented:

Enoz is the undisputed leader among all products for destroying and preventing moths.

Did you know that most methods of attacking moths will not *kill* moths? It is a fact. But Enoz is different.

Enoz is the only moth spray that **KILLS**.

Enoz not only destroys moths—it is at the same time an invaluable moth preventive.

Its effectiveness is long-lasting, and garments, furs and other items, when properly treated with Enoz, will dependably repel the demon moth.

Nearly one hundred per cent active in destroying moth life.

It is the easiest, simplest, most effective and most economical method of moth control ever known.

Though deadly to moths, Enoz is absolutely harmless to humans and animals.

Moth Balls will repel moths, but have no power in ordinary quantities to kill moth eggs or moth worms. If eggs or worms are in the garment when put away they will hatch and do their destruction, moth balls or no moth balls.

Enoz—the guaranteed Moth Spray that is positive and instant death to every stage of moth life * * * and it makes furs and fabrics moth-resistant.

The original Moth Spray that prevents moth infestation * * * that kills moth worms, moth eggs.

* * * is sold and recommended by all good Drug, Hardware and Department stores everywhere.

Enoz cleans and re-lusters upholstered furniture, carpets and rugs * * * Will not only moth proof the fabrics, but will bring out the original color and lustre.

The respondent hereby admits:

That, according to scientific authority, Enoz is not the leader among all products for exterminating moths, or the only spray that kills;

That it is not moth-proofing or a permanent moth preventive;

That it will not destroy every form of moth life, and its use may be harmful to humans and animals;

That said product will not restore color to fabrics or re-luster upholstered furniture, carpets or rugs;

That the results claimed for said product are not "guaranteed".

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Enoz is the undisputed leader among all products for destroying or preventing moths;

(b) That Enoz is the easiest, simplest, most effective or most economical method of moth control ever known;

(c) That Enoz is absolutely harmless to humans or animals;

(d) That most methods of attacking moths will not kill moths;

(e) That Enoz prevents moth infestation or that it is a moth preventive for more than a short period of time;

(f) That the effectiveness of Enoz is long lasting;

(g) That moth balls have no power to kill moths or moth worms; or that they will not prevent eggs or worms from hatching or doing their destruction;

(h) That Enoz is recommended by all good drug, hardware and department stores everywhere;

(i) That Enoz will make or keep the home moth free;

(j) That Enoz re-lusters upholstered furniture, carpets or rugs, or brings out the original color;

(k) That Enoz Moth Spray is "guaranteed";

and from making any other claims or assertions of like import. (Oct. 12, 1936.)

01505. Vendor-Advertiser—Medicinal Preparation.—Forrest Kinder, an individual trading as Darcin Pharmacal Co., St. Louis, Mo., vendor-advertiser, is engaged in selling a medicinal preparation designated Darcin Tablets, and in advertising represented:

Safely take DARCIN TABLETS before going outside and have no fear of taking additional cold.

The new improved cold remedy. (Letter)

The respondent hereby admits:

That according to reliable medical authority Darcin Tablets are not a new improved cold remedy;

That Darcin Tablets may not be taken more safely than other preparations containing acetanilid derivatives;

That the use of Darcin Tablets before going outside could not be depended upon generally to remove the danger of taking additional cold;

That the respondent does not operate a pharmacy or pharmacal company.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its

said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Darcin Tablets are a new or improved cold remedy;
 - (b) Generally, that Darcin Tablets are safe;
 - (c) That the taking of Darcin Tablets before going outside will eliminate the danger of taking additional cold;
- and from making any other claims or assertions of like import. (Oct. 12, 1936.)

01506. **Vendor-Advertiser—Hearing Treatments.**—Oliver Conklin, an individual trading as Auritone Co., West Palm Beach, Fla., vendor-advertiser, is engaged in selling Auritone Pneumatic Massager, Auritone Ear Oil, Auritone Massage Cream, Auritone Mouth Wash, Auritone Nose Drops, Auritone Nasal Balm, Auritone Daily Regulators, to be used separately or in combination as a treatment for impaired hearing, and in advertising represented.

Why be deaf? Don't allow deafness to handicap you and prevent you from enjoying life. New marvelous Auritone home treatment showing improvements in many cases of deafness within a few days. * * * Scientifically based on same principles used by leading ear specialists.

* * * The Auritone treatment with its simple home apparatus can give you the benefit of the same method as used by leading specialists.

It is the consistent use of the AURITONE treatment that brings for a complete relief from deafness.

* * * Remember that neglected deafness always grows worse * * *.

* * * As a permanent result of any of the numerous infectious diseases of the organs of hearing these organs often remain in a damaged condition with thickened membranes * * *. The AURITONE PNEUMATIC MASSAGER * * * is advised in all cases of impaired hearing short of complete deafness for the reason that it is the only means that will reach and stimulate all the tissues of the ear, * * *. To soften the Auditory canal and the Ear Drum and to heal the affected linings the AURITONE EAR OIL is advised. To assist in drawing and keeping the proper circulation of the blood, the AURITONE EAR MASSAGE CREAM is provided. * * *

Where there are either acute or chronic catarrhal conditions in the throat or nasal passages or in the middle ear chamber it is necessary to remove these troubles and for this purpose the AURITONE Treatment supplies: (1) The AURITONE Aromatic Antiseptic mouth wash in the concentrated form of tablets to be dissolved in water and used as a gargle. (2) The AURITONE Nose Drops to be used in medicine dropper. These drops are of a nature to flow all over the membranes lining the nasal passage, reaching the mouth of the Eustachian tubes, gradually opening them and following the middle ear. This remedy is antiseptic, soothing and stimulating to the inflamed parts and greatly promotes healing. (3) There is the AURITONE Catarrh Balm, a stronger antiseptic and stimulant to be used twice daily, IN ACUTE CASES ONLY. It assists greatly in opening and clearing the passages and removes accumulated secretions and promotes early removal of catarrh from the nasal surfaces.

WE RECOMMEND: For the relief of all degrees of deafness, where no active catarrh has been present for a long time, the AURITONE pneumatic ear massage instrument and the AURITONE Ear Oil. AURITONE Massage Cream

will be found of much benefit in restoring healthy action. It increases and prolongs the effect of the AURITONE Massage.

Where there is chronic catarrh of the ear, nose or throat the treatment above in addition the use of the AURITONE Aromatic Mouth Wash (Tablet form) and the AURITONE Nose drops.

Where there is acute catarrhal infection, catarrhal deafness, recently acquired and active infected conditions of the membranes of the nose and throat, use AURITONE Catarrh Balm in connection with the whole treatment.

The respondent hereby admits:

That the value of respondent's treatment is limited to the temporary relief of impaired hearing not due to defective ear drums;

That various methods involving different principles are used in the treatment of impaired hearing;

The organs of hearing do not always remain in a damaged or thickened condition as a result of some temporary ailment and neglected deafness does not always necessarily grow more serious in its condition.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's products used separately or in combination constitute a competent treatment or an effective remedy for impaired hearing unless such representations are limited to the temporary relief of impaired hearing not due to defective ear drums or other causes that cannot reasonably be expected to be substantially benefited by the use of respondent's products;

(b) That respondent's method of treatment is identical to or based on the same principles of treatment used by ear specialists unless qualified to indicate that there are other methods of treatment;

(c) That use of respondent's treatment will afford "complete" relief from impaired hearing;

(d) That neglected deafness "always" grows worse;

(e) That the organs of hearing "often" remain in a damaged or thickened condition as a result of diseases affecting such organs;

(f) That the Auritone massager is the only "means" that will affect the ear "tissues";

(g) Inferentially by the use of such statement "why be deaf" or otherwise that all cases of deafness can be benefited by the use of respondent's products;

and from making any other claims or assertions of like import. (Oct. 12, 1936.)

01507. Vendor-Advertiser—Reducing Preparation.—H. R. Hostettler, an individual operating under the trade name of Swan-Reed Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling a medicinal

preparation for the purpose of effecting reduction in weight and designated Slim, and in advertising represented:

A New Safe Way to REDUCE.

You can lose 4 to 6 pounds with your first 10-day treatment of SLIM, a new and totally different preparation.

Restores the figure, improves health.

The respondent hereby admits:

That the use of ammonium chloride will produce results deleterious to the user;

That the elements of this preparation are not new to the medical profession;

That no medical preparation can be depended upon to restore the normal figure of a user;

That the use of such a preparation cannot be depended upon to improve the health of the user.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Slim is safe, or provides a safe way to reduce;
- (b) That this preparation is new to the medical profession;
- (c) That the use of these tablets will restore one's figure;
- (d) That by using Slim, one's health will be improved;

and from making any other claims or assertions of like import. (Oct. 12, 1936.)

01508. Vendor-Advertiser—Rupture Appliance.—Health Research, Inc., a corporation, Akron, Ohio, vendor-advertiser, is engaged in selling a certain appliance for the treatment of rupture, designated Air-Draulic Pad, and in advertising represented:

"Healing" rupture with appliances, liniments, methods, plasters, or systems is bunk. Don't spend another cent on such things until you read the authentic "Truth About Rupture Cures" written by a rupture appliance specialist of 25 years' experience. It also describes the modern new Air-Draulic Pad which stops rupture with the same certainty hydraulic brakes stop an auto.

A gentleman from Long Island, N. Y. * * * said he had always experienced great difficulty with ordinary truss pads tipping out at the bottom and allowing his rupture to escape. But with AIR-DRAULIC he could do anything he pleased, get into any position and the rupture never slipped a particle.

But while it is true that a rupture cannot be "healed," the fact remains that in some cases where the proper style of truss or support is worn for a sufficient length of time and the rupture given no chance to escape, the stretched and weakened muscles around the rupture opening may gradually regain their normal strength to such an extent that the support may be left off when not doing any work that requires much lifting or straining.

Nothing like it has ever been sold and according to the testimony of those ruptured people who have had the opportunity to try it out, the new pad promises to revolutionize the truss business.

If, therefore, there is any truth in the theory that massage is beneficial in the mechanical treatment of rupture, no retaining pad ever devised can equal Air-Draulic as a massager. You obtain the same effect without the slightest effort on your part that would be obtained were you to spend time and energy in massaging the parts with your hand or with some mechanical device.

* * * We respectfully suggest that you leave the matter to our judgment and let us determine, after making a careful study of your description, which type of belt used with Air-Draulic Pad will be most likely to prove effective in your particular case.

Result of 25 years' research, the new Air-Draulic Rupture Pad is proving the most efficient pad many ruptured persons have ever used.

Air-Draulic pad, for the first time, gives you real freedom and security.

Health Research, Inc.

The respondent hereby admits:

That the appliance sold by it designated "Air-Draulic Pad" is a mechanical device known as a truss, and is substantially similar to other trusses in its operation;

That such appliance does not constitute a cure for rupture, and that wearing it for some time will not result in a rupture staying reduced without its use;

That use of the appliance would not constitute a satisfactory treatment for all types of rupture;

That the action of the appliance does not constitute an effective massage, equal in value to a hand massage, or a massage that is superior to that given by similar appliances;

That the appliance will not prevent ruptures from slipping a particle whatever the wearer may do, or position he may get in;

That the appliance is not the result of 25 years of research, and does not provide the wearer for the first time with real freedom and security;

That its business is not a non-profit organization devoted to scientific research.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Air-Draulic Pad inferentially or by direct statement constitutes a cure for rupture, or that wearing such appliance will permit the stretched and weakened muscles around the rupture opening to gradually regain their normal strength to such an extent that the support may be left off in certain cases;

(b) That the appliance prevents ruptures from slipping a particle whatever the wearer may do, or position he may get in;

(c) That nothing similar to this appliance has ever been sold, or that it promises to revolutionize the truss business;

(d) That the appliance has value as a massage equal to a hand massage, or is superior to similar appliances as a massager;

(e) Inferentially or by direct statement, that the appliance is satisfactory in the treatment of all types of rupture;

(f) Inferentially or by direct statement, that the appliance can be satisfactorily fitted by mail in all cases;

(g) That the appliance is the result of 25 years research, or that it provides the wearer with real freedom and security;

and from making any other claims or assertions of like import.

The respondent further agrees and stipulates to cease and desist from the using the words "Health Research" in its trade name, or other words denoting or tending to denote that its business is a non-profit organization devoted to scientific research, until the business shall be conducted in such a manner. (Oct. 13, 1936.)

01509. **Vendor-Advertiser—Medicinal Preparations.**—The Heneph Corporation, a corporation, Kingston, N. Y., vendor-advertiser, is engaged in selling certain medicinal preparations designated D. W. Kold Kaps, Heneph Pills, Bitter Tonic Tablets, Quassia Tablets, Heneph's Blue Flag Laxative Tablets, Henefroids, Bismuth Powder Compound, and Ri-An Tablets, and in advertising represented:

D. W. KOLD KAPS

D. W. KOLD KAPS will give you almost immediate relief from all cold symptoms;

They will allay your fever, check your sneezing and decrease the flow of water from your eyes.

GET RID OF THAT COLD. *In 24 hours* or we refund your money.

* * * absolute relief in 12 hours.

HENEPH'S PILLS

The urine will turn a bluish green color after taking a few of these pills. This is an indication that the pills are working properly and the color is the natural result of the action of one of the ingredients.

BITTER TONIC TABLETS

Your weight indicates Your Health! It is dangerous to be underweight. Your undernourished system invites disease germs. You become sickly, catch colds and other contagious sickness. You become nervous, lack courage, lose "pep" and feel generally "no good."

Bitter Tone Tonic Tablets help you eat more, digest more, hence weight more.

A complete daily bowel movement is absolutely essential to good health. We cannot let poisonous waste matter rot inside us unless we are willing to pay the price in loss of appetite, loss of pep, indigestion, belching, gas, biliousness, broken out skin and even the tortures of aches and pains we may mistake for rheumatism.

In taking Bitter Tone Tonic Tablets, notice the immediate freedom from many of the usual symptoms of indigestion, such as gas, bloating, belching, heaviness, sleepy feeling, etc. This indicates the aid these tablets are giving to your digestion.

BISMUTH POWDER COMPOUND

THOUSANDS OF PEOPLE HAVE INDIGESTION AND HYPERACIDITY AND DON'T KNOW IT. Many persons think they do not have indigestion

tion because they have no pain or distress. When there is only a small amount of hyperacidity there is generally no pain or inconvenience felt at all, but frequently the head feels heavy. There is a lack of physical energy. There may be headaches or even dizziness as a result of hyperacidity, without any manifestation of distress. Whenever you have any of the above symptoms take a little Bismuth Powder, and if your symptoms disappear quickly, it is probable that your trouble is indigestion.

Prepared especially for dyspepsia, indigestion and digestive disorders arising from hyperacidity.

Corrects heartburn, distress after eating, bad sour breath; relieves belching, gas, bloating, headaches, dizziness and similar disorders attendant upon hyperacidity.

RI-AN TABLETS

* * * neither need you take violent drugs, drugs that rend your system. Drugs that do more harm than good. There's an easier, better, simpler, surer way.

RI-AN is guaranteed to give absolute relief from nervousness.

The respondent hereby admits:

That although, according to scientific opinion, D. W. Kold Kaps possesses certain therapeutic value, it cannot be relied upon to give almost immediate relief from all cold symptoms; nor does it have value in allaying the fever and sneezing associated with colds and would in all likelihood materially influence the flow of water from the eyes;

That D. W. Kold Kaps will not drive germs out of the system and act as a substantial preventive of the complications of a cold;

That D. W. Kold Kaps would not be a competent remedy in the treatment of la grippe;

That Heneph's Pills has certain value in minor kidney ailments but would not be an effective treatment for serious kidney lesions;

That Bitter Tone Tonic Tablets is of limited therapeutic value but according to reliable medical opinion, will not increase the weight of an individual, nor insure his freedom from the symptoms of indigestion, heaviness, sleepy feeling, etc.;

The Henefroids may serve to relieve piles of a certain type but cannot be offered as a competent remedy in the treatment of the various forms of piles;

That although Quassia Tablets may tend to increase the appetite and act as a stimulant to increase the gastric secretions and act as a laxative, the properties of these tablets would not warrant the claims made for their use in more serious or pathological conditions of the stomach;

That Bismuth Powder Compound contains ingredients that have certain therapeutic value but would not serve as a competent remedy for dyspepsia, indigestion and digestive disorders arising from hyperacidity, nor will it correct gastric distress and all forms of headache;

That Heneph's Blue Flag Laxative Tablets are a simple laxative preparation of value solely as a laxative in relief of temporary constipation and would not be a competent remedy for loss of appetite, loss of pep, indigestion, biliousness, broken-out skin or aches and pains;

That Ri-An Tablets consist mainly of an analgesic drug and would not be a competent remedy for nervousness, rheumatism or neuritis.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That D. W. Kold Kaps will give almost immediate relief from all cold symptoms;

(b) That D. W. Kold Kaps will allay the fever accompanying colds, check the sneezing and decrease the flow of water from the eyes;

(c) That D. W. Kold Kaps is a competent remedy or effective treatment for la grippe, or symptoms indicative of said malady;

(d) That D. W. Kold Kaps will get rid of a cold in 24 hours, or afford absolute relief therefrom in 12 hours;

(e) That D. W. Kold Kaps have been most successful in breaking stubborn colds;

(f) That D. W. Kold Kaps can be relied upon to drive germs out of the system and avoid the more serious consequences or complications of colds;

(g) That Heneph's Pills are a competent remedy or effective treatment for serious kidney lesions;

(h) That the bluish green color in the urine after taking Heneph's Pills is an indication that the pills are working properly or that said color is the natural result of the curative or healing action of one of the ingredients;

(i) That Bitter Tone Tonic Tablets will increase one's weight through natural methods with complete safety;

(j) That Bitter Tone Tonic Tablets will give immediate freedom from many of the usual symptoms of indigestion, such as gas, bloating, belching, heaviness, sleepy feeling;

(k) That Quassia Tablets is an effective remedy or competent treatment for the more serious or pathological conditions of the stomach;

(l) That Heneph's Blue Flag Laxative Tablets is a competent remedy for loss of appetite, loss of pep, indigestion, biliousness, broken-out skin or aches and pains;

(m) That Henefroids is a competent remedy in the treatment of the various forms of piles;

(n) That Henefroids will give "complete relief" from piles;

(o) That Bismuth Powder Compound is a competent remedy for dyspepsia, indigestion and digestive disorders arising from hyper-acidity;

(p) That Bismuth Powder Compound corrects gastric distress and all forms of headache;

(q) That Ri-An Tablets are a competent remedy for nervousness, rheumatism or neuritis;

(r) That Ri-An is guaranteed to give absolute relief from nervousness;

(s) That Ri-An is a safe and effective remedy for any disease;

(t) That Ri-An is an easier, better, simpler and surer way to obtain relief and one need not take violent drugs that rend the system and do more harm than good;

(u) That Ri-An will soon cause one to absolutely forget all symptoms of any disease;

(v) That Ri-An will relieve pain quickly;

(w) That Ri-An will stimulate the heart and whole system without depressing the heart;
and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of its products in interstate commerce, to cease and desist from the use of the trade name Quassia Tablets unless and until said product shall depend principally upon quassia for its therapeutic value, and not upon other active ingredients. (Oct. 13, 1936.)

01510. Vendor-Advertiser—Medicinal Preparations.—Harold C. Breckenridge, an individual trading as Quality Chemical Co., Detroit, Mich., vendor-advertiser, is engaged in selling preparations designated Magic Concentrates, and in advertising represented:

Complete Sales Plans and free goods with your first order.

On offer No. 3, you pay \$4.90, we give you products worth \$24.00 FREE.

* * * Every time you spend a dollar with us we will give you 50¢ worth FREE. (This offer is good on everything but SPICES AND EMPTY BOTTLES) (This offer is good for ten days from time you receive it * * * We are giving Free Goods to get you started.)

We give you FREE GOODS worth more than four times what you pay for your order.

Dolora Alice Healthy Hair Shampoo. It stops Itching Scalp, Makes the Hair grow.

Nature's Blood Purifier and Laxative Tonic; Relieves that Tired Worn Out Feeling, Dizzy Spells; good for Liver, Stomach, Kidneys and Nerves.

MAGIC COUGH SYRUP * * * checks the spread of congestion and infection to the lungs as it is a powerful germ killer.

It meets all the requirements of the Pure Food and Drug Act.

MAGIC HITS THE SPOT LINIMENT * * * Will relieve Sprains, Sore Muscles, Bruises, Lumbago, Rheumatism, etc.

The ingredients in this liniment are of the highest quality and have great penetrating power.

You can make scientific The World's Greatest Cleaner by simply mixing water with Scientific concentrate. Restores original luster.

But Scientific cleans all the dirt right off the surface with a beautiful luster which will not collect dust and the weather has no effect on it.

The respondent hereby admits:

That the products offered as premiums are concentrates only, and are of no greater value than the prices charged for them by the respondent;

That the sales plan and articles represented as "free" to purchasers of respondent's goods are included in the prices charged for such goods, and the offer of "free goods" with each purchase is not withdrawn after ten days.

That there is no preparation known to medical science that will make hair grow;

That there is no evidence that "Nature's Blood Purifier and Laxative Tonic" will relieve fatigue or Dizzy spells, or that it has any therapeutic effect upon the liver, stomach, kidneys or nerves;

There is no evidence that "Magic Cough Syrup" will check the spread of congestion or infection to the lungs; that it is a germicide, or that it meets the requirements of the Food and Drug Act;

That there is no evidence that "Magic Hits the Spot Liniment" will relieve the pathological conditions mentioned in the advertising; that the ingredients have penetrating power;

That "Scientific" will not restore original luster nor leave a surface which will not collect dust or be affected by the weather;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is "free" when the price thereof is included in the charge for the combination of things offered;

(b) That any article is worth more than the price charged by respondent;

(c) That "Dolora Alice Healthy Hair Shampoo" will make hair grow;

(d) That "Nature's Blood Purifier and Laxative Tonic" relieves that tired worn out feeling, or dizzy spells, or that it will benefit the liver, stomach, kidneys or nerves;

(e) That "Magic Cough Syrup" checks the spread of congestion or infection to the lungs, or that it is a germ killer;

(f) That "Magic Cough Syrup" meets all the requirements of the Pure Food and Drug Act;

(g) That "Magic Hits the Spot Liniment" will relieve sprains, bruises, lumbago or rheumatism;

(h) That "Scientific" restores original luster to any surface, or leaves the surface so that it will not collect dust, or so that the weather will not affect it;

(i) That any offer is limited to any definite period of time unless the offer is withdrawn at the expiration of the time stated;

and from making any other claims or assertions of like import. (Oct. 13, 1936.)

01511. **Vendor-Advertiser—Washing Fluid.**—William E. Huber, an individual doing business under the trade name of Wonderene Co., Milwaukee, Wisc., vendor-advertiser, is engaged in selling a washing fluid designated Huber's Wonderene Solution, and in advertising represented:

It is not a poison.

* * * thoroughly disinfects wherever used.

HOUSEHOLD USE

To clean and remove stains and disinfect the bath tub, basin or kitchen sink, wipe with small cloth moistened with the clear solution.

GENERAL CLEANING

Disinfecting and deodorizing, use the solution in small quantities clear.

STERILIZE.

Sterilizes all babies' clothes, diapers, nipples, bottles, etc.

Sterilizes * * * toilets and wash bowls.

Wonderena is positively not a poison.

THE LIQUID CHLORINE SOLUTION.

FOR THE TOILET.

FOR THE BABY * * * Wash nipples, bottles, toys, crib sides, etc., in this solution.

FOR THE REFRIGERATOR.

FOR THE GARBAGE CAN * * * you will not be bothered with flies or insects.

FOR PORCELAIN SURFACES * * * will leave dish cloth sweet and clean.

FLOORS—KITCHEN CABINETS, WALLS AND GENERAL CLEANING.

DESTROY ALL GERMS.

FOR DRAINS * * * SANITARY. WONDERENE disinfects.

FOR THE CARE OF CHICKENS * * * prevents diarrhea which is the cause of all poultry diseases. * * * kills all lice. Spray the roosts, nests and poultry houses with pure Wonderene for same results.

FOR DOGS * * * will rid the dog of fleas.

The respondent hereby admits:

That Wonderene will act as a disinfectant only when the article to be disinfected has been thoroughly cleansed before application of solution;

That Wonderene will not act as a sterilizer, since it will not kill all germs including their spores;

That Wonderene will not keep garbage pails free from flies and insects;

That Wonderene cannot be relied upon to rid a dog of fleas or a chicken of lice.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Wonderene is not a poison;
 - (b) That Wonderene thoroughly disinfects wherever used, unless specific directions are set forth in equally discernible type providing for thoroughly cleansing the object to be disinfected before application of solution;
 - (c) That Wonderene will sterilize;
 - (d) That Wonderene will kill all germs;
 - (e) That if one washes his garbage pail with a solution of Wonderene, he will never be bothered with flies or insects;
 - (f) That washing the toilet with Wonderene once a week will keep it sanitary;
 - (g) That Wonderene will disinfect drains
 - (h) That one tablespoon of Wonderene added to each gallon of drinking water for chickens will prevent diarrhea;
 - (i) That two cups of Wonderene added to a pail of water makes a very effective dip for chickens, which kills all lice;
 - (j) That all chicken lice may be killed by spraying the roost, nests, and poultry houses with pure Wonderene;
 - (k) That by adding one teacup of Wonderene to a pail of water when washing the dog will rid him of fleas;
 - (l) That Wonderene is a chlorine solution;
- and from making any other claims or assertions of like import. (Oct. 13, 1936.)

01512. Vendor-Advertiser—Skin Lotion.—Chamberlain Laboratories, a corporation, Des Moines, Iowa, vendor-advertiser, is engaged in selling a certain skin lotion designated Chamberlain's Lotion, and in advertising represented:

Penetrates the tiny pores almost at once.

Penetrates almost instantly.

Utterly new kind of lotion.

Entirely different from other lotions.

Chamberlain's heals * * * your skin.

It is absorbed in only 37 seconds.

It * * * revitalizes, youthifies the skin.

Chamberlain's lotion is a complete beauty treatment.

A blend of 13 imported oils.

Actually, in a single day, its thirteen imported oils make your hands more attractive than old fashioned lotions do in a month.

This new type lotion quickly makes hands soft, white, smooth and lovely.

Heals and prevents sunburn, chap, windburn, soreness—cracked or irritated skin and lips.

The instant skin softener.

Smooths, freshens and revives rough, dry, sore hands.

Keeps skin of face, arms and neck in perfect condition.

A precious safeguard for your skin that * * * heals inflamed, suffering tissues.

Works a daily miracle on hands, arms and skin.

Wonderful for Athlete's Foot.

Brings back youthful bloom to tired, dull, lifeless complexions.

Exactly the lotion your skin needs to retain the fresh, charming radiance of youth.

And how it transforms hands * * * rebeautifies.

A few drops, used several times daily, * * * banishes unattractive roughness.

It contains thirteen of the most vital imported oils, each noted for a specific skin need.

Heals inflamed tissues.

Restores * * * skin loveliness.

It * * * gently but surely reduces exaggerated pores.

I know that Chamberlain's Lotion is the only lotion that has everything that a woman who is careful of her skin wishes to find.

Chamberlain's Lotion marks a tremendous advance over ordinary, old fashioned lotions.

The respondent hereby admits:

That the preparation designated Chamberlain's Lotion would have a limited value in its softening action upon the skin, and a soothing effect in cases of exposure to sun, water, wind, etc., but that it could not be depended upon to freshen or revive rough, dry and sore hands, nor could it be regarded as an instant skin softener;

That the preparation will not be absorbed in 37 seconds, nor will it penetrate the tiny pores of the skin almost at once. The preparation will not heal the skin since healing is a function of the living tissue;

That the preparation is not unlike similar preparations on the market and does not mark a tremendous advance over other lotions, nor will it make the hands more attractive in a single day than other lotions would in a month;

That it does not contain thirteen imported oils, each of which is noted for a specific skin need, nor does the preparation constitute within itself a complete beauty treatment, containing everything that a woman who is careful with her skin wishes to find;

That it will not rejuvenate or revitalize the skin, transform the hands, restore the beauty of the skin, retain the youthfulness of the skin, keep the skin in perfect condition, or banish roughness;

That the preparation will not prevent sunburn, chap, windburn, soreness and cracked or irritated skin and lips, due to exposure to sun, wind, water, etc., in all cases;

That the preparation is not a competent treatment or "wonderful" for Athletes Foot;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Chamberlain's Lotion is entirely different from other lotions, or that it marks a tremendous advance over ordinary, old fashioned lotions;

(b) That the preparation will penetrate the pores almost at once, or almost instantly;

(c) That the preparation is absorbed in 37 seconds, is completely absorbed, or is an instant skin softener;

(d) That the preparation will "heal" inflamed, suffering tissue or will "heal" the skin;

(e) That the preparation will revitalize, or rejuvenate the skin, or that it will enable the skin to retain the fresh, charming radiance of youth;

(f) That the preparation is a complete beauty treatment, or contains everything that a woman who is careful of her skin wishes to find;

(g) That the preparation is a blend of 13 imported oils, or that each of such oils is noted for a specific skin need, or that in a single day its 13 imported oils will make the hands more attractive than old fashioned lotions would in a month;

(h) That the preparation will make hands soft, white and lovely, rebeautify or transform the hands, keep the skin of face, arms and neck in perfect condition, freshen and revive rough, sore hands, restore skin loveliness, or work a daily miracle on hands, arms and skin;

(i) That the preparation will prevent sunburn, chap, windburn, soreness—cracked or irritated skin and lips in all cases;

(j) That the preparation will reduce exaggerated pores, or banish unattractive roughness;

(k) That the preparation is a competent treatment, or "wonderful" for Athletes Foot;

and from making any other claims or assertions of like import. (Oct. 13, 1936.)

01513. **Vendor-Advertiser—Chemical Solution.**—Eugene Munk, an individual, doing business under the trade name of Duad Co., Duad Laboratories, Duo-Beaute Laboratories, New York, N. Y., vendor-advertiser, is engaged in selling a sensitizing solution designed to print pictures on wood, rubber, cloth, etc., designated Duo-Print, and in advertising represented:

Results guaranteed.

No dark room or special equipment.

Complete postpaid treatment to print 200 3 x 5 pictures, 50¢.

Money-back guarantee protects you.

Takes but 4 minutes.

The respondent hereby admits:

That results are not "guaranteed";

That, on cloudy days, special equipment is required;

That it takes longer than 4 minutes to print and develop a picture with this solution;

That, according to the weight of scientific authority, the 50¢ treatment, represented as sufficient to print 200 3 x 5 pictures, is sufficient to sensitize not more than 35 prints of this size.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That results are "guaranteed";

(b) That no dark room or special equipment is required;

(c) That the 50¢ "treatment" is sufficient to print 200 3 x 5 pictures;

(d) That it takes but 4 minutes to complete the picture;

and from making any other claims or assertions of like import. (Oct 13, 1936.)

01514. Vendor-Advertiser — Medicinal Preparation.— Associated Pharmacists of Massachusetts, Inc., a corporation, Salem, Mass., vendor-advertisers, are engaged in selling a preparation designated Chaulmex, and in advertising represented:

* * * The Chaulmex formula is based on chaulmoogra oil, and produces remarkable results in healing skin afflictions.

Chaulmex * * * the way it heals children's skin rashes is amazing * * *

* * * Keep it handy to * * * heal the skin.

Chaulmex heals * * * Chaulmex beautifies! Try Chaulmex for stubborn skin affliction * * *

TRY CHAULMEX FOR STUBBORN SKIN AFFLICTION! CHAULMEX SUCCEEDS WHEN ORDINARY SKIN TREATMENTS FAIL! * * *

* * * Men of science quickly adapted chaulmoogra to the daily needs of skin care and treatment. * * * Irritation and skin discomfort are speedily banished by Chaulmex. Thousands who have used it for severe skin troubles testify to the truth of this statement * * *

* * * People who take pride in firm, glowing healthy skin use Chaulmex as a skin tonic * * *

* * * Chaulmex * * * is equally effective whether used for slight or severe skin afflictions * * *

* * * Chaulmex will heal complexion blemishes * * * Whether you suffer from a skin affliction or simply wish to improve the beauty of your skin and the clearness of your complexion * * * try chaulmex * * *

* * * Chaulmex will * * * give the skin a soft, smooth texture * * *

* * * Whenever beauty cream is used, first massage a little Chaulmex into the skin. Then proceed with facial cream as usual * * * Chaulmex vitalizes and invigorates that beauty cream. Chaulmex comforts, heals and beautifies the skin * * *

* * * Chaulmex, a little medicine chest in itself * * *

* * * For sunburn, if applied in time, it prevents severe burns * * *

* * * CHAULMEX contains chaulmougra oil, successfully used by governments to heal the severest of all skin afflictions * * *

* * * Irritation and skin discomfort are banished with Chaulmex * * *

* * * a little Chaulmex in the nostrils should keep you freer from colds this winter than you ever have been * * *

* * * the value of this skin-healing treatment is brought to the vast army of men, women and children who want a clear, healthy, vibrant skin * * *

Use Chaulmex to keep the skin healthy, firm and glowing * * *

* * * Babies and grown-ups rely on Chaulmex to banish SEVERE skin ailments. * * *

* * * Use Chaulmex as a skin tonic * * *

So broad is the efficacy of CHAULMEX that we strongly urge and recommend its use in a wide range of minor external conditions which ordinary remedies have failed to benefit * * * Common skin troubles * * * pimples, blackheads * * * Boils, sores * * * piles * * *

The respondent hereby admits:

The efficacy of respondent's product is limited to such aid as it may afford in relieving irritations of the skin that are due to external causes;

The president of the corporation is the only pharmacist connected with it.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product will "heal" any condition of the skin;

(b) That the product is a competent treatment or an effective remedy for skin troubles, pimples, blackheads, boils, sores, piles, blemishes, or any other condition of the skin unless limited to the relief of such skin conditions as the product may reasonably be expected to benefit;

(c) That Chaulmougra oil has been adapted to the daily needs of skin care and treatments;

(d) That the product will "banish" any condition of the skin;

(e) That the product is a skin "tonic";

(f) That the product is equally effective for slight or severe skin "afflictions";

(g) That the product will give the skin a soft or smooth "texture";

(h) That the product will vitalize or invigorate beauty cream or that it will beautify the skin;

(i) That the product is a "medicine chest" in itself;

(j) That the product will prevent sunburn;

(k) Inferentially or otherwise that the product will prevent colds; and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using the term "Associated Pharmacists of Massachusetts" as a part of its trade name or from otherwise representing or implying that the respondent corporation is an association of individuals engaged in the practice of pharmacy. (Oct. 13, 1936.)

01515. Vendor-Advertiser—Hair Preparation.—Kenneth M. Wickware, an individual, trading as K-W Co., Detroit, Mich., vendor-advertiser, is engaged in selling a certain preparation designated Wick's Hair Root Stimulant, and in advertising represented:

* * * where the hair follicles have become clogged and stifled due to dandruff or other causes, and where scalp circulation is sluggish, the hair roots may become dormant or inactive, but not actually "dead" * * * we believe there is a way to correct this condition, and Wick's Hair-Root Stimulant has been prepared expressly for this purpose.

* * * we are going to make you this special introductory offer—for a limited time only—A FULL SIZE JAR OF WICK'S HAIR-ROOT STIMULANT—FOR ONLY \$2.00 (Regular price \$3.00).

* * * Not long ago a man came in to see us * * * it was plain to see that he had been suffering from premature loss of hair.

* * * it developed that he had been using Wick's Hair-Root Stimulant and scalp exercise for about three months past * * *.

Upon examining his scalp under a good light, it could be seen that he had actually succeeded in starting some light-colored *new hair*, both on the bald places and mixed in with the older hair * * *.

"I don't know just how much of this new hair will grow out into full size, dark-colored hair, but I believe some of it is bound to. I really think my hair is going to get gradually thicker for some time yet. Anyway, I feel that I have stopped it from thinning out—AND IF I HAVE HAIR FIVE YEARS FROM NOW, I BELIEVE I WILL HAVE WICK'S HAIR-ROOT STIMULANT TO THANK! * * *.

* * * Wick's contains no irritants or other harmful ingredients * * *

The respondent hereby admits:

That the efficacy of respondent's product in the treatment of the conditions for which it is represented is limited to that of a counter-irritant;

That respondent's offer was not limited to a definite period of time after which offers to purchase under such offer were refused.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product will "correct" the following conditions:

1. Clogged hair follicles;
2. Sluggish scalp circulation;
3. Dormant or inactive hair roots;
4. Dandruff;
5. Premature loss of hair;

(b) Inferentially or otherwise that use of the product will cause the growth of hair;

(c) That the product will stimulate hair roots;

(d) That the product contains no irritants or harmful ingredients;

(e) That any offer is a "special" offer or for a limited time unless a definite time limit is set and offers to purchase under the terms of the offer received thereafter are refused;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using the words "hair root stimulant" as a part of the trade name for said product. (Oct. 13, 1936.)

01516. Vendor-Advertiser—Household Preparations—J. E. Ledger, an individual operating under the trade name of Standard Chemical Co., Dayton, Ohio, vendor-advertiser, is engaged in selling several preparations for use in making a cleaning compound, food flavoring and home remedies, and in advertising represented:

Sell to homes, stores 1000% profit, Earn up to \$60 weekly.

Make up to \$60 weekly with water from your kitchen.

Up to 1000% profit making own product. \$3.60 worth of concentrated powder makes 36 lb., world's finest cleaner and polish. You sell for \$36.00.

Make fast selling products of the finest quality that you can sell the next day for as much as \$18.00 and up to 600%.

You can make Vanilla, Lemon, Walnut and Maple flavorings of the highest quality, wonderful lemon and tar shampoo, Hygiea Herb Laxative Cough Remedy.

There is no other polish to equal QUICKLEEN. Wonderful for automobiles, furniture, woodwork and all lacquered, painted or enameled surfaces. Restores original luster.

Hygiea Herb Laxative Compound is a wonderful blood purifier and laxative tonic. Well known in pharmacopia and acknowledged in all medical circles for their tonic and laxative value. It is unexcelled for constipation. It is a valuable aid in kidney and liver disorders. It relieves gas pains, dizziness and nervousness due to stomach ailments.

TISSUE-TONE "MYSTERY" LINIMENT: Here is the liniment that goes right to the spot. Aches and lumbago respond quickly to its penetrating action. It reaches deeply into the tissues.

LEMON—TAR: Promotes hair growth.

A quick relief for troublesome coughs and bronchial troubles. Quick Relief Cough Remedy is powerfully germicidal and prevents spread of infection and congestion to the chest and lungs.

Tissue-Tone Mystery Liniment, safe—sure—goes right to the spot.

AMBROSIA, Lemon flavoring.

HYGIEA LAXATIVE COMPOUND. The Old Reliable Blood Purifier and Tonic. Contains no habit forming drugs.

Magic Factory. Turns single dollars into tens * * * Make up to 900% profit.

A dimes worth of material makes a dollars worth of profit.

The respondent hereby admits:

That the amounts stated in the advertising exceeds that which can be earned by sales persons or dealers of respondent under normal

conditions, and that the merit of the several products advertised by respondent for use in making cleaning compound, food flavoring and home remedies are in many instances incorrectly stated.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That one can make products of the "finest" quality from the ingredients furnished by the respondent;

(b) That one can make Vanilla, Lemon, Walnut or Maple flavoring of the "highest" quality, or wonderful lemon and tar-shampoo, Hygiea Herb Laxative, or wonderfully effective cough remedy from the respondent's products;

(c) That the compound designated "Hygiea Herb Laxative" is either a wonderful tonic or blood purifier, a valuable aid in liver or kidney disorders, or that it will relieve nervousness due to such ailments;

(d) That the preparation designated "Tone Tissue Liniment" either goes right to the spot or reaches deeply into the tissues;

(e) That the preparation designated "Tone Tissue Liniment" is either penetrating or sure, or that aches or lumbago respond to its action;

(f) That the preparation designated "Lemon Tar Shampoo" promotes the growth of hair;

(g) That the preparation designated "Quick Relief Cough Remedy" will give relief from coughs or bronchial troubles; or that it will prevent spread of infection or congestion to the chest or lungs;

(h) That the preparation designated "Quickleen" will restore the original lustre to automobiles, furniture, woodwork or to painted, lacquered or enamelled surfaces;

and from making any other claims or assertions of like import.

And the respondent further stipulates and agrees in all future advertising in interstate commerce, to cease and desist from the use of the word "herb" as a part of the name of his laxative compound;

And respondent further agrees and stipulates in all future advertising in interstate commerce, to cease and desist from the use of the word "mystery" as a part of the name of his liniment.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, stipulates and agrees:

(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 or dealers under normal conditions in the due course of 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 or dealers under normal conditions in the due course of 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 or representation of earnings. (Oct. 15, 1936.)

01517. Vendor-Advertiser—Medicinal Preparation and Publications.—Dr. J. Douglas Thompson, an individual, Oakland, Calif., vendor-advertiser, is engaged in selling *Dubla* and *Health and Diet Publications*, and in advertising represented:

Infectious and contagious diseases of all types are caused by acidosis.

DUBLA is now used by the leading hospitals of London, Berlin, Paris and Vienna. It has saved millions of lives and dollars. It will overcome your disease and start you "eating your way to health".

Statistics show that eight out of every ten people are constantly under par * * * simply because of acidosis or superacidity.

DUBLA not only tests the blood to accurately determine its alkalinity or acidity, but it is equally as effective in testing the urine, sputum, stool and even the exhaled air from the lungs.

DUBLA * * * Just one drop of this precious liquid on the palm of your hand quickly tells the exact percentage of acid within your system, whether it be ten, twenty, or even eighty per cent, and through its special scientific colorimeter chart you are told just what you must eat as well as to avoid toward overcoming those rheumatic aches and pains, that dreaded arthritis, that vicious skin disease, that stomach, intestinal, heart or liver condition * * * for through the science of DUBLA you too can overcome your Superacidity and start "eating your way to health".

If you happen to be one of the unfortunates, you are told how to speedily overcome it, whether it be a heart disease, high blood pressure, insomnia, a serious kidney disturbance, or any one of the many hundreds of diseased conditions.

This literary masterpiece and real health encyclopedia of untold value in the betterment of that health of yours. As a fitting companion to *THE EATING YOUR WAY TO HEALTH LIBRARY*, Mrs. J. Douglas Thompson has completed another very fascinating book which has appropriately been called *THE EATING YOUR WAY TO HEALTH LIBRARY COOK BOOK* and which is the result of extensive research work each of its untold number of recipes were tested not once but dozens of times in the kitchen of her own home by this famous international authority on the subject of food.

The respondent hereby admits:

That not all types of infectious and contagious diseases are caused by acidosis; and no proof has been furnished by respondent that any of such diseases are so caused;

That superacidity is not the general cause of premature old age and death, as stated;

That correct diet is not the only source of health, as asserted;

That it is possible to catch disease; and that the claim that diseases are generally the result of wrong diet or food combinations is not supported by any evidence furnished by the respondent or in the possession of the Commission;

No evidence whatsoever has been furnished to support the claims that Dubla is recognized by leading hospitals; is an effective agent in determining the acid conditions of the body; or is efficacious in the treatment of any of the pathological conditions mentioned in the advertising;

No evidence whatsoever has been offered to show:

That Dr. J. Douglas Thompson taught in one of the Nation's leading colleges;

That he discovered any unknown elements in food;

That he wrote the greatest masterpiece of all times;

That he is recognized as an authority on nutrition, or is the leader in the science of diet;

That he is famous for his research work, or that his services are in demand by food companies;

That his articles or publications are used by universities or colleges, or that they are featured in the Nation's leading newspapers or magazines;

That they are regularly read by more than 40,000,000 persons;

or

That more than 300,000 persons now have respondent's books;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That infectious and contagious diseases are caused by acidosis;

(b) That superacidity causes premature old age or death;

(c) That no other source can bring health to you than that of the correct diet and food combinations;

(d) That it is impossible to "catch" disease; or that diseases, generally are manufactured in the body because of the wrong diet or food combinations;

(e) That statistics show that eight out of every ten people are constantly under par because of acidosis or superacidity;

(f) That Dubla is

1. The result of years of laboratory research work;

2. Recognized in European hospitals as the one or the only means of detecting acidosis or superacidity;

3. Used by the leading hospitals of London, Berlin, Paris, or Vienna;
 4. Effective in testing the urine, the sputum, the stool, the exhaled air from the lungs; or the blood to determine its alkalinity or acidity;
 - (g) That Dubla has saved millions of lives, or dollars;
 - (h) That by the application of Dubla in the hand the diagnosis of a condition of acidosis is made possible;
 - (i) That with the combined used of Dubla and a chart called a "Colorimeter" the percentage of acid in one's system may become known;
 - (j) That by the use of said product and device, with the aid of Dr. Thompson's specially planned diet control, any specified percentage of acid in one's system may be overcome or that such treatments would cause the blood stream to assume a perfect alkaline reaction;
 - (k) That by the use of respondent's diet plan one would be able to overcome rheumatism, aches and pains, arthritis, skin diseases, stomach, intestinal, heart or liver conditions, and superacidity;
 - (l) That Dr. J. Douglas Thompson taught in one of the Nation's leading colleges;
 - (m) That Dr. Thompson's text books are used by universities or colleges, or by the most prominent healing colleges;
 - (n) That Dr. Thompson's services are in demand by food companies, or that they are constantly seeking his advice;
 - (o) That through Dr. Thompson's research work many unknown elements in food have been discovered;
 - (p) That Dr. Thompson's diet and health articles are being featured by the Nation's leading newspapers or magazines; or that his health articles are appearing in the Metropolitan daily newspapers;
 - (q) That Dr. J. Douglas Thompson wrote the greatest masterpiece of all time, or that "The Eating Your Way to Health Library" is the greatest masterpiece of all time; or that by reading said publication one will understand how to speedily overcome heart disease, high blood pressure, insomnia, kidney disturbance, or many hundreds of other conditions;
 - (r) That Dr. Thompson's books are on sale at the stores of John Wanamaker;
 - (s) That Dr. J. Douglas Thompson is recognized as an international authority on the subject of nutrition, or is famous for his research work, or is the leader in the science of diet;
- and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01518. Vendor-Advertiser—Coin Books.—B. Max Mehl, an individual, trading as Numismatic Co. of Texas, Fort Worth, Tex., vendor-advertiser, is engaged in selling booklets entitled "The Star

Rare Coin Encyclopedia" and "The Star Coin Book" and an illustrated folder giving certain information on coins, and in advertising represented:

The only book of its kind approved by a curator of a government.

Star Rare Coin Encyclopedia and Stamp Catalog.

TWO THOUSAND ILLUSTRATIONS OF COINS.

The Star Rare Coin Encyclopedia. It is by long odds the finest, most complete and most authoritative coin book of its kind issued at any price.

The respondent hereby admits:

That the publications do not contain the represented number of illustrations;

The publications have not been officially approved by any Government official or agency;

Other publications contain as much authentic information as those sold by respondent.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any publication contains a certain number of illustrations unless such is a fact;

(b) That said publications have been officially approved by any Government official or agency;

(c) That said publications are the most complete or the most authoritative;

and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01519. Vendor-Advertiser—Medicinal Preparation.—W. H. Noll, an individual doing business under the trade name of the Pinex Co., Fort Wayne, Ind., vendor-advertiser, is engaged in selling a preparation for coughs, designated "Pinex" and in advertising represented:

FOR BAD COUGH MIX THIS BETTER REMEDY AT HOME.

* * * try it for a distressing cough. * * * it can be depended upon to give quick and lasting relief.

END BAD COUGH QUICKLY.

Has no equal for breaking up distressing coughs.

It is surprising how quickly this loosens the phlegm, soothes the irritated membranes, helps clear the air passages, and thus ends a bad cough in a hurry.

It is used in more homes than any other cough remedy, because it gives more prompt, positive results.

TO END ANNOYING COUGH, MIX THIS RECIPE AT HOME.

* * * it positively has no equal for quick, lasting relief.

A chest cough is the meanest ailment that I know of at this time of year. It can make your life miserable if you neglect it. And may I suggest, for quick and lasting relief, use PINEX. It is without doubt the greatest cough remedy you'd ever want. * * * You'll get instantaneous relief, because PINEX gets right at the bottom of that aggravating cough.

* * * *positive, quick and lasting relief*, when someone picks up a nasty old cold.

100% effective.

Gets rid of the average chest cough in a hurry.

PINEX *relieves even the most stubborn coughs.*

Get rid of your cough with a very pleasant and effective remedy—PINEX.

Prompt and *lasting* results.

If that little boy of yours, or little girl, comes home from school coughing, don't worry. Call the drugstore for a bottle of PINEX. * * * and you'll marvel how quickly those coughs disappear * * *.

Makes coughs disappear.

Mothers—if you worry about your children when they have colds and coughs persistently—TRY PINEX.

Are you allowing constant coughing, due to colds to tear you down physically and weaken your resistance? If you are, you're risking your health. For cough relief try PINEX—the remedy you mix at home to make a full pint of pleasant-tasting, quick-acting medicine. It helps RID you of that terrible tickling sensation in your throat.

Are you bothered by recurrent coughing throughout winter? * * * we recommend PINEX.

Soothing remedy for that constant coughing which upsets you physically.

An ordinary cough due to a cold is too dangerous to experiment with. *Get rid of it at once.*—but be sure you use a good—time—tested cough remedy. Here's what to do—ask your druggist for PINEX—spelled P-I-N-E-X. He knows it contains a pleasant form of guaiacol—one of the few medically approved agents for quick-acting cough relief.

The respondent hereby admits:

That although according to scientific opinion Pinex will afford relief from coughs due to colds, it cannot be offered as a competent and positive treatment for coughs generally;

That the potassium guaiacol sulphorate in Pinex is very helpful in temporarily relieving coughs, but cannot be relied upon with the other ingredients contained in this preparation to “end” a cough or “rid” the patient of a cough or terrible tickling sensation in the throat;

That although Pinex has certain limited therapeutic value, it will not give instantaneous relief, nor can it be represented that it is 100% effective.

In a stipulation filed and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's preparation is an effective remedy or competent treatment for coughs, unless such representation be qualified to indicate coughs due to colds;

(b) That respondent's preparation is “100% effective”;

(c) That respondent's preparation will end a bad cough quickly or in a hurry;

(d) That respondent's preparation will give quick, immediate or lasting relief from distressing colds;

(e) That respondent's preparation will give instantaneous or positive relief from colds;

(f) That respondent's preparation makes coughs disappear or will get rid of coughs at once;

(g) That respondent's preparation relieves the most stubborn cough or has no equal for breaking up distressing coughs of whatever cause;

(h) That respondent's preparation should be used in cases of persistent, recurrent or constant coughing;

(i) That respondent's preparation will rid one of that terrible tickling sensation in his throat;

and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01520. Vendor-Advertiser—Astrological Information.—M. N. Bunker, an individual doing business under the trade name of Madam Serena, Winona, Minn., vendor-advertiser, is engaged in selling an Astrological Chart, and in advertising represented:

When I examined your request for the 10¢ report I found some exceedingly interesting facts—so I had an INDIVIDUAL, *strictly personal* brief scope made for you, and am sending it to you with my best wishes for your success.

Your report is made for you.

When I get your order for a COMPLETE SURVEY I take your birth date which you give me—and WHICH SHOULD BE EXACT—and I work out your scope.

Your report is personal. IT MUST BE *Because it is made for you, after your order is received.*

NO TWO REPORTS ARE THE SAME.

Your Solar-Scope gives you a Map to guide you in love, home, business, or social life. It uncovers your talents—weaknesses—and shows you a way to gain the greatest return in happiness and success.

Form letter, marked "F-2", page 3, contains a long dissertation on what is purported to be a "secret" or "Master Secret" which the advertiser claims has greatly benefitted him, will benefit any and every one who writes for it and sends him a stamped envelope, Under the heading "What is the SECRET that I GIVE YOU", the advertiser makes a number of extravagant and false claims for his "secret". He insists that the "secret" will enable any and every one to solve money problems, to gain happiness, to double business, to pay debts, to own automobiles, to acquire a new grasp on life, to get better food and better clothes, to secure employment from employers who are not employing anyone, to procure free transportation over long distances, and other claims as absurd and ridiculous.

The respondent hereby admits:

That no "individual" or "strictly personal" report is made for, or furnished, the customer for the price charged;

That no "Solar-Scope" of the value of \$5.00 is prepared and furnished for the price of \$2.00;

That each "scope" or "Solar-scope" or "Personal Map" is not made for the customer after the order is received;

That the "secret" or "Master Secret" is not given free;

That the "secret" or "Master Secret" will not enable one to solve money problems, or to gain happiness, or to double business, or to pay debts, or to own automobiles, or to acquire a new grasp on life, or to get better food and better clothes, or to secure employment, or to procure free transportation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That, upon receipt of request for the 10¢ report, exceedingly interesting facts were discovered resulting in the making of an "individual, strictly personal brief scope" which was sent the customer with best wishes for success;

(b) That "Your report is made for you";

(c) That "Your report is personal", or is made after the order is received;

(d) That no two reports are the same;

(e) That a Solar-Scope—

1. Gives a map to guide one in love, home, business, or social life;

2. Uncovers talents or weaknesses; or

3. Shows a way to gain the greatest return in happiness or success;

(f) That the "secret" or "Master Secret" is given free so long as it is included in the price of a "handwriting report";

(g) That the "secret" or "Master Secret" will enable any and everyone to—

1. Solve money problems;

2. Gain happiness;

3. Double business;

4. Pay debts;

5. Own automobiles;

6. Acquire a new grasp on life;

7. Get better food and better clothes;

8. Secure employment; or

9. Procure free transportation.

and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01521. Vendor-Advertiser—Medicinal Preparation.—Psoriatex Laboratory, Inc., a corporation, Philadelphia, Pa., vendor-advertiser, is engaged in selling a medicinal preparation designated "Psoriatex", and in advertising represented:

Don't suffer with this scaly skin affliction. *Psoriatex relieves the most chronic cases no matter how long affected.*

* * * Massage afflicted areas with finger tips for at least five minutes to allow enough of the ointment to *penetrate the skin.*

Psoriasis is a germ disease. The germs operate in the tissues of the skin and live and subsist upon the oil in the skin and when they have abstracted and absorbed all the oil from the skin, the dried tissues break up and a scale forms on the surface.

Therefore a carefully compounded ointment is the best treatment, when applied externally to the lesions of Psoriasis it goes through a process of penetration to the pores of the skin, into the capillaries which results in the healing of the scales upon the skin as well as those unformed psoriasis lesions under the skin.

The Psoriatex Laboratories are greatly gratified to announce a tested *positive* relief for Psoriasis.

Psoriatex is also efficient in the treatment of dandruff and eczema.

* * * *has been very effective in a good many cases in the treatment of Eczema and Dandruff.*

* * * I am almost sure that your remedy stimulated the *growth of my hair* and completely cured my scalp of Psoriasis.

The respondent hereby admits:

That according to reliable medical authority the cause of Psoriasis is unknown and its duration, regardless of treatment, is uncertain; and whereas Psoriatex may serve to remove scales of heavy eruption, relieve itching and improve the appearance of the lesions in indolent cases, it cannot be depended upon as a competent remedy in the treatment of Psoriasis.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Psoriatex is a competent remedy in the treatment of Psoriasis unless qualified to state that the benefit resulting from its use is limited to the removal of scales of a heavy eruption, to the relief of itching, and to improving the appearance of the lesions in indolent cases;

(b) That said preparation—

1. Relieves the most chronic cases no matter how long affected;
2. Penetrates the skin;
3. Heals the lesions under the skin;
4. Is efficient in the treatment of dandruff or eczema;
5. "Stimulates" the growth of hair;
6. Completely cures the scalp of psoriasis;

(c) That Psoriasis is a germ disease or that the germs operate in the tissues of the skin or live on the oil in the skin;

(d) That Psoriatex is a "guaranteed treatment," only a refund of purchase price being guaranteed;

and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01522. Vendor-Advertiser—Washing Fluid.—Charles Beahm, an individual doing business under the trade name of Laborlite Manufacturing Co., Portland, Oreg., vendor-advertiser, is engaged in selling a certain trisodium phosphate washing preparation designated Laborlite, and in advertising represented:

"Laborlite" contains no * * * harmful ingredients.

"Laborlite" is composed of harmless minerals.

"Laborlite" destroys all odors from hands and body as well as sterilizes all cuts * * *.

It will destroy all odor and germs from dishes, milk cans, sinks and lavatories.

This will sterilize and deodorize your milk bottles.

This will sterilize your cans.

Sterilize dishes.

The respondent hereby admits:

That, according to scientific opinion, Laborlite will not sterilize any object; i. e., kill all germs, including their spores;

That Laborlite cannot be depended upon to destroy all odors;

That Laborlite is composed of harmful minerals or ingredients.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Laborlite will sterilize or destroy all germs;

(b) That Laborlite will destroy all odors;

(c) That Laborlite contains no harmful ingredients;

(d) That Laborlite is composed of harmless minerals;

and from making any other claims or assertions of like import. (Oct. 15, 1936.)

01523. Vendor-Advertiser—Novelties.—L. Sachs, an individual trading as Plastex Industries, New York, N. Y., vendor-advertiser, is engaged in selling novelties and moulds to be used in the manufacture of such novelties, and in advertising represented:

WE START YOU IN BUSINESS * * * and for big production of Art Goods, Novelties, Souvenirs, etc. in Plastex and Marble imitation. * * * 2¢ material makes 25¢ articles. * * * We place orders and buy goods. * * * Plastex Industries * * *.

* * * we furnish rubber moulds in which the articles are cast. The make of these rubber moulds is a French-Italian method * * *.

You cannot help but make perfect castings each and every time * * *.

* * * Every purchaser of moulds is given the formula for making the composition known as "MARBLITE". The formula is absolutely useless without our special moulds.

The man in this actual photograph is just in the act of pouring the plaster into the moulds. Toward the back of the shop, we see a girl inserting the clock in

the barrel on which the elephant is poised. Well in the foreground on the work bench, we see one of the moulds opened in two parts. Notice the hundreds of finished castings. His profit figured lowest at 24¢ each mould would mean \$100 per week, if he makes only seventy-five a day but he makes a good deal more * * *.

The respondent hereby admits:

The respondent does not order or buy all of the products of his customers, but only so much as he can sell, and pays his customers a wholesale price fixed by himself for them;

It is the formula for mixing the materials cast in the moulds that is French-Italian, and not the moulds;

The formula by which the products are manufactured can be used with moulds other than those sold by respondent;

Respondent does not start anyone in business, but merely sells customers moulds and materials and sometimes extends credit;

No one purchasing respondent's moulds has earned the amounts represented as being possible to be earned.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially by such statement as "we start you in business" or otherwise that respondent gives financial assistance to any one who may desire to enter into the business of manufacturing articles by the use of moulds sold by him;

(b) Inferentially by such statement as "2¢ material makes 25¢ articles" or otherwise that respondent pays any amount in excess of the wholesale price for any article purchased by him unless such is the fact;

(c) That respondent's moulds are manufactured by a French-Italian method;

(d) That one "cannot help but make perfect castings" with respondent's moulds;

(e) That any formula of respondent's is useless without respondent's moulds;

(f) Inferentially by such statement as "we place orders and buy goods" that the respondent will either buy, or procure purchasers for all of the articles a person may manufacture by use of moulds and material supplied by respondent; and from making any other claims or assertions of like import.

The respondent further stipulates and agrees:

(g) Not to make unmodified representations or claims of earnings in excess of the average earnings of those who purchase moulds or materials from him, achieved under normal conditions in the due course of business;

(h) 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 persons purchasing moulds or materials from him, under normal conditions in the due course of business;

(i) 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 persons purchasing moulds or materials from him, under normal conditions in the due course of 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 or representation of earnings. (Oct. 19, 1936.)

01524. **Vendor-Advertiser—Medicinal Preparation.**—Vaughan Bros., Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a product designated Nu-Erb, and in advertising represented:

"A couple years ago I was suffering terribly with indigestion, stomach distress, kidney weakness and backache * * * Dr. French's Nu-Erb not only brought me wonderful relief at the time, but I have been in good health ever since using this medicine. The troubles with my stomach disappeared * * *."

The new, effective and complete formula from which NU-Erb is compounded usually produces results quickly where the old fashioned theories of treatment took months and sometimes years.

Six to eight bottles are recommended as the most effective course. This treatment seldom fails to bring results desired.

The great Herbal Medicine as prepared from the original Prescription of a Leading Medical Doctor.

* * * a superior medicine for restoring strength and relieving common ailments of the stomach, kidneys, liver and bowels. * * * Seldom fails to overcome ailments such as the following:

INDIGESTION causing gas formations, fermentation of food, nervousness, heartburn, nausea, loss of weight, lack of energy and sleeplessness.

SLUGGISH LIVER indicated by bilious attacks, dizzy spells, spots before the eyes, a dull, tired feeling and constipation.

KIDNEY WEAKNESS bringing about disturbed sleep, burning scalding pains, backaches and headaches.

RHEUMATISM-NEURITIS particularly when due to excess acids and accumulations of poison wastes in the system. We honestly believe NU-ERB to be one of the really great medicines for rheumatism and neuritis.

NU-ERB gets to the roots of your troubles, relieves the cause, builds up sound * * * that does not disappear as soon as you have stopped the treatment.

NU-ERB ends the suffering caused by constipation, gas on the stomach, nervousness, heartburn, poor sleep, headaches and dizzy spells.

It acts within 10 minutes to stop gas and pains, sourness, bloat and belching. At the same time NU-Erb drives the poisons from the kidneys and relieves backaches, bladder irritation and weakness.

NU-ERB will cleanse your bowels (gradually—not drastic or severe) as they were NEVER CLEANSED BEFORE.

It will clean up skin eruptions caused by the impurities in the organs, will overcome the sallowness or "muddiness" that is due to sluggish liver and will put the ROSY GLOW OF HEALTH into your cheeks.

The respondent hereby admits:

That according to reliable medical authority Nu-Erb cannot be accepted as a competent remedy in the treatment of any of the pathological conditions mentioned in the advertising, and its therapeutic value is limited to its action as a laxative, diuretic, stomachic and mild tonic.

That said preparation is not a new formula, nor is it prepared from the prescription of a doctor.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Nu-Erb is a competent remedy in the treatment of common ailments of the kidneys, liver or bowels, indigestion, rheumatism or neuritis;

(b) That Nu-Erb has been of any material benefit to those in search of better health, or to those who have unsuccessfully tried other medicines;

(c) That Nu-Erb is a new formula, or is prepared from the prescription of a doctor;

(d) That Nu-Erb aids nature to impart strength to the vital organs, or causes them to function normally;

(e) That desired results may be expected from using six to eight (or any other number of) bottles of Nu-Erb;

(f) That Nu-Erb is a miracle worker;

(g) That Nu-Erb—

1. Builds up strength and vigor;
2. Drives gas or impurities from the system;
3. Tones up the liver or kidneys;
4. Regulates the bowels;
5. Relieves nervousness, suffering, or pain;
6. Gets to the roots of the troubles;
7. Relieves the cause of any ailment;
8. Relieves acid conditions, sour breath, or heartburn;
9. Relieves backache;
10. Relieves bladder irritation or weakness;
11. Acts within any definite period of time;
12. Relieves indigestion, bloating, sour stomach, shortness of breath, or dyspepsia;
13. Cleans up skin eruptions;

14. Overcomes sallowness or muddiness;
15. Puts the rosy glow of health in one's cheeks;
16. Builds one up in general;
17. Makes one years younger;
18. Will restore strength;
19. Relieves biliousness;

(h) That Nu-Erb possesses any therapeutic property other than its action as a diuretic, laxative, stomachic or mild tonic.

and from making any other claims or assertions of like import. (Oct. 19, 1936.)

01525. Vendor-Advertiser—Medicinal Preparation.—Fannie L. Judy, an individual trading as Judy Medicine Co., San Diego, Calif., vendor-advertiser, is engaged in selling a product designated Judy's Tablets, and in advertising represented:

* * * Judy's Tablets—25 years in use for Indigestion, Constipation, Nervous Complaints, Aching and Swollen Joints, Headaches and other ailments * * *

\$7.20 starts you in a business of your own, where you can get a good trade established, and regain your health and conquer depression, with a guaranteed product. Send ten cents for sample and particulars * * *

* * * Health is your greatest asset in life. Do you know that when you build up your system in a scientific way, you will be a healthy person? JUDY'S SARSAPARILLA CELERY, PEPSIN TABLETS are a proven product. Many write us they are cured of Rheumatism, Gall Stones, Stomach, Kidney and Liver Troubles. 6 months' treatment \$1.25. Special price, limited time, \$1.00. Money back guarantee * * *

The respondent hereby admits:

That the therapeutic value of the product is limited to that of a laxative and as such it would not be a competent remedy for treatment for indigestion, nervous complaints, aching joints, swollen joints, constipation, rheumatism, gall stones, stomach trouble, kidney trouble, liver trouble;

That the value of the product in the treatment of headaches is limited to such relief as it may afford from headaches due to constipation;

That the product itself, in fact, is not guaranteed; respondent's offer in connection therewith being that of a promise to refund the purchase price in case the results are not satisfactory;

That no evidence has been furnished that the offer mentioned in respondent's advertising was limited to a definite period of time;

That no evidence has been furnished that the product has been used for 25 years.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or an effective remedy for indigestion, constipation, nervous complaints, aching joints, swollen joints, rheumatism, gall stones, stomach trouble, kidney trouble, liver trouble, or that said product will cure any of such conditions;

(b) That said product is a competent treatment or an effective remedy for headaches unless limited to the relief of headaches due to constipation;

(c) That the product will "build up" the system;

(d) That use of the product will enable one to regain health;

(e) That the product is "guaranteed";

(f) That any offer is for a limited time unless a definite time limit is fixed and all offers to purchase thereafter received are refused;

(g) That by selling said product one can "conquer" depression;

(h) That said product has been used for any period of time not substantiated by the facts;

and from making any other claims or assertions of like import. (Oct. 19, 1936.)

01526. Vendor-Advertiser—Medicinal Preparations.—Takara Laboratories, a corporation, Los Angeles, Calif., vendor-advertiser, is engaged in selling certain medicinal preparations designated—

TAKARA HYGIENIC POWDER

FORFEM

TAKARA SUPPOSITORIES

and in advertising represented

While an effective destroyer of germ life, TAKARA does not harm the most delicate tissues. It is the ideal preparation for feminine hygiene * * * as it is SAFE to use as often as desired.

To enjoy the same degree of health and freedom from worry after marriage, physicians and nurses highly recommend the use of TAKARA Hygienic Powder as a douche.

* * * perfectly safe to leave within the inquisitive reach of children.

TAKARA SUPPOSITORIES FOR FEMININE HYGIENE * * * Effective and harmless.

In place of constant worry and the ceaseless shadow of doubt, TAKARA offers peace of mind, a sense of security—an opportunity to gain and retain the vigor and vitality of youth.

ANTISEPTIC FOR FEMININE HYGIENE.

She has banished fear and worry, so often the cause of extreme nervousness, loss of strength and many ailments from which women suffer.

You won't think of it as a doctor's prescription at all.

You have guessed, perhaps, that I refer to feminine hygiene—and that vague haunting fear that every woman knows; the fear of disorders that may play havoc with her youth, health, and vitality.

Naturally, your first question is, "What safeguards shall I take?" And my answer—written out of years of practical experience as a trained nurse * * *.

No matter how frequent the application or how strong the solution, it simply cannot injure the most delicate tissues. No wonder it is so heartily endorsed by prominent physicians and specialists in feminine disorders.

* * * she has asked me, personally, to send you a liberal trial package.

TAKARA SUPPOSITORIES

Thousands of American women have found the answer to their perplexing personal hygiene problems by the combined use of the twin products—TAKARA Suppositories and Hygienic Powder. TAKARA Suppositories are made from the finest ingredients. You may use them with confidence. Best results when used in combination.

FORFEM does not contain any narcotics or habit forming drugs.

The respondent hereby admits:

That none of the respondent's products is an effective contraceptive;

That none of the products referred to is an effective germicide or disinfectant;

That preparations containing amidopyrine, alum or carbolic acid cannot be described as entirely "safe;"

That Takara Hygienic Powder, when used as directed, would not constitute a remedy or treatment for any female disease or disorder;

That none of the preparations referred to is a doctor's prescription;

That respondent does not now employ a trained nurse, nor anyone named Grace Livingstone.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) By direct statement or reasonable inference, that any of respondent's products is an effective contraceptive, or—

1. Is an effective destroyer of germ life,
2. Is the ideal preparation for feminine hygiene,
3. Will enable one to enjoy the same degree of health and freedom from worry after marriage,
5. Offers peace of mind, a sense of security,
6. Will banish fear and worry,
7. Is the answer to women's perplexing personal hygiene problems,
8. One may use them with confidence,
9. Give best results when used in combination;

(b) That any of the products referred to is an effective germicide or disinfectant;

(c) By direct statement or by reasonable inference that Forfem is safe;

(d) That any of the products referred to is a competent treatment or an effective remedy, for feminine ills or that it—

1. Offers an opportunity to gain or retain the vigor or vitality of youth,

2. Constitutes a competent treatment or effective remedy for extreme nervousness, loss of strength, and many ailments from which women suffer, or for disorders that may play havoc with her youth, health and vitality,
3. Is endorsed by prominent physicians and specialists in feminine disorders;

(e) That any of the products referred to is a doctor's prescription;

(f) By direct statement or by reasonable inference that respondent employs a trained nurse who gives advice on the basis of years of experience, or who personally performs any duties for respondent; and from making any other claims or assertions of like import. (Oct. 20, 1936.)

01527. **Vendor-Advertiser—Washing Fluid.**—Moonshine Chemical Co., Inc., a corporation, Pittsburgh, Pa., vendor-advertiser, is engaged in selling a washing fluid designated Moon-Shine, and in advertising represented:

Moon-Shine Washing Fluid destroys odors.

Moon-Shine Washing Fluid bleaches, removes stains and mildew, deodorizes, disinfects and kills germs in one operation.

Moon-Shine as a bleaching agent for regular laundry work eliminates rubbing and boiling.

It bleaches, deodorizes, disinfects, and has a hundred helpful household uses.

Spotless, white clothes—sparkling bathrooms—sanitary drains—all owe their perfect condition to MOON-SHINE—the original washing fluid.

The respondent hereby admits:

That, while Moon-Shine will destroy some odors and kill some germs, it will not destroy all odors or kill all germs including their spores;

That in order for Moon-Shine to be effective as a disinfectant, it is necessary first to thoroughly cleanse the surface to be disinfected;

That Moon-Shine does not eliminate all rubbing from the regular laundry work.

In a stipulation filed and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Moon-Shine Washing Fluid destroys odors, unless clearly indicated in direct connection with such claims that it will not destroy all odors;

(b) That Moon-Shine Washing Fluid kills germs, unless clearly indicated in direct connection with such claims that it will not kill all germs including their spores;

(c) That Moon-Shine Washing Fluid bleaches, removes stains and mildew, deodorizes, disinfects and kills germs in one operation;

(d) That Moon-Shine Washing Fluid eliminates rubbing from the regular laundry work;

(e) That Moon-Shine Washing Fluid disinfects, unless clearly indicated in direct connection with such claims that it is first necessary to thoroughly cleanse the surface to be disinfected;

(f) That Moon-Shine Washing Fluid has a hundred helpful, household uses;

(g) That spotless, white clothes—sparkling bathrooms—sanitary drains—all owe their perfect condition to Moon-Shine Washing Fluid; and from making any other claims or assertions of like import. (Oct. 20, 1936.)

01528. **Vendor-Advertiser—Reducing Preparation.**—Mrs. O. Debaugh, an individual doing business under the trade names of Raoxolyn Products, Raoxolyn Health Products, Raoxolyn Laboratories, Chicago, Ill., vendor-advertiser, is engaged in selling a certain preparation designated Alpine for the Waistline and in advertising represented:

Purges poisonous waste matter from intestinal tract, normalizing the entire system.

Nature's own discovery for health building and weight control.

Reduce safely.

Get at the Cause of Fat—By stimulating the functioning of a gland with an "Ocean Plant" as Medical Science has revealed. In normalizing the functioning and the Gland giving forth a proper amount of secretion, this will keep food from turning to fat. "Alpine for the Waistline" gently purges all poisonous waste matter from intestinal tract, thoroughly cleansing and correcting any concrete solidification of putrified matter that may be obstructing the evacutory canal, thus getting at the cause of major and minor ailments, and keeping the body free from toxic poison, expels gas, corrects constipation, relieves stuffiness, body takes on a rounded, slenderness, youth-like strength and energy.

ALPINE FOR THE WAISTLINE corrects "Constipation" the Mother of all Ailments. Constipation must be avoided as it often accompanies an over-weight condition.

DO NOT DIET. It makes people look wan, drawn and old. The body needs a variety and plenty of wholesome food containing the different chemical elements to build strong and healthy bodies.

FAMOUS DOCTORS ALMOST UNIVERSALLY ADVISE NATURAL GENTLE METHODS SUCH AS ALPINE FOR THE WAISTLINE.

A PERFECT OBESITY CORRECTIVE.

The respondent hereby admits:

That, according to scientific opinion, the medicinal value of respondent's product is practically limited to that of a senna laxative and would not act as a stimulant to the Thyroid gland;

That the laxative property of respondent's product cannot be effective as a corrective for constipation;

That respondent's product will not purge the intestinal tract of poisonous waste and act as a normalizer for the entire system;

That although irritant laxative action of respondent's product may prevent normal assimilation of the food ingested and rush the food

through the alimentary canal, thus causing certain persons to lose weight, such loss of weight would be promptly regained when the use of the product was discontinued, and therefore respondent's product cannot be regarded as a corrective for obesity.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling her said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product is a powerful stimulant for the Thyroid Gland;

(b) That respondent's product is Nature's Neutralizing Normalizer;

(c) That respondent's product gets at the cause of fat;

(d) That respondent's product purges poisonous waste matter from the intestinal tract, normalizing the entire system;

(e) That respondent's product is Nature's new discovery for health building and weight control;

(f) That said product is a remedy for too large waistline;

(g) That said product is a tonic eliminator and perfect obesity corrective;

(h) That said product is of special value to those whose physical condition will not permit the use of salts or Thyroid for the purpose of reducing;

(i) That said product is safe and harmless;

(j) That said product gets at the cause of major or minor ailments and keeps the body free from toxic poison, expels gas, corrects constipation, relieves stiffness;

(k) That said product causes body to take on a rounded slenderness; youth-like strength and energy;

(l) That said product will cause a loss of 63 pounds in weight without a drug, dieting or violent exercise;

(m) That said product makes organs function as Nature intended;

(n) That said product will cause one to live longer;

(o) That said product is Nature's own food;

(p) That said product is not a drug;

(q) That said product is a master health creation;

(r) That famous doctors almost universally advise methods such as respondent's product;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using as a part of her trade name the word "Laboratories" or the word "Laboratory", or any other word or words of similar tenor or effect, unless and until she actually maintains a place where scientific investigations are conducted.

The respondent further stipulates and agrees to cease and desist from using the words "Alpine For The Waistline" as a trade name in soliciting the sale of her product in interstate commerce. (Oct. 23, 1936.)

01529. Vendor-Advertiser—Antiseptic Preparation.—Lehn & Fink, Inc., a corporation, Bloomfield, N. J., vendor-advertiser, is engaged in selling a preparation designated Lysol and in advertising represented:

* * * It is the standard antiseptic in modern hospitals in every country. She was afraid to be happy * * * Then the right man came along and brought her * * * imagine a few brief months of utter bliss, following them tragedy * * * she was nervous, irritable, depressed * * * she came to me for advice * * * and told me all the old familiar symptoms, her tortured nerves, her worries, her fears * * * she confessed that she was afraid to be happy. Her trouble, I told her, was so simple that it could be remedied with just two words * * * use Lysol. I explained to her * * * how quickly those fears could be removed if only she would regularly employ Lysol for marriage hygiene * * * She took my advice and today it would warm your heart to see the happiness of this young couple.

* * * Its regular use is such an assurance of immaculate feminine daintiness * * * to say nothing of the peace of mind it brings.

Lysol kills germs, protects your home from disease.

It is the usual practice of doctors and nurses when making preparations—for a confinement case to specify that Lysol must be on hand.

* * * the douche should follow married relations as a cleansing and antiseptic agent * * * the Lysol douche * * * is * * * effective.

The vagina is the passage leading from the outside to the uterus or womb. It is lined with a mucous membrane which produces a secretion as its own means of normally keeping the vaginal passage clean and healthy. In the unmarried, this secretion is usually sufficient, but with the married woman an antiseptic douche should follow married relations as a cleansing agent * * *.

The effectiveness of an antiseptic against germs depends to some extent upon how promptly you use it after exposure. Promptness is important. You should be prompt and regular in the use of Lysol disinfectant douche for marriage hygiene. Waiting when you instinctively feel the need of a cleansing and soothing douche treatment is not wise. The nozzle used in the vaginal douche should be one especially made for this particular use. Before taking, place the douche bag in a convenient place slightly higher than the body, assume a partial recumbent position. Now, induce the nozzle gently without force in the vaginal passage and permit the solution to flow in a steady stream * * * You will have * * * an assurance of protection.

Public Health Authorities all over the world recommend Lysol * * * to help check spread of disease.

No other general disinfectant is so widely recommended by * * * Public Health Bureaus.

The respondent hereby admits:

(a) Respondent's product is not "the" standard antiseptic in the sense that it is the official or scientific measure by which others are rated.

(b) The efficiency and uses of Lysol are generally limited to those of

a disinfectant to cleanse premises, instruments, appliances and the person, to prevent infection, promote antiseptic cleanliness and destroy offensive odors.

(c) While respondent's product is recommended by many physicians and nurses in cases of confinement, other products are also recommended for such conditions.

(d) While Lysol is a disinfectant and antiseptic cleansing agent useful in feminine hygiene, there is no product or drug that according to present scientific knowledge can alone be relied upon with certainty as a contraceptive.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product is "the" standard antiseptic in the sense that it is the official or scientific measure by which others are rated.

(b) That respondent's product will protect from disease without indicating that its uses are generally limited to those of a disinfectant to cleanse premises, instruments, appliances and the person, to prevent infection, promote antiseptic cleanliness and destroy offensive odors.

(c) That doctors or nurses specify that respondent's product "must" be on hand in confinement cases in the sense that no other products are so specified.

(d) Inferentially or otherwise, that respondent's product will prevent conception or that its use will bring "peace of mind."

(e) That respondent's product is effective for "marriage hygiene" as distinguished from "feminine hygiene." and from making any other claims or assertions of like import. (Oct. 23, 1936.)

01530. Vendor-Advertisers—Correspondence Courses.—The Ring Book Shop, Inc., a corporation, and Nat Fleischer, an individual New York, N. Y., vendor-advertisers, are engaged in selling a course of instruction designated Nat Fleischer's Universal Boxing Course and System of Exercise for Height Increase, and in advertising represented:

Add from half an inch to two inches to your height.

* * * If you are less than 26 years of age * * * my system of physical training specially devised for increasing your height, will turn the trick.

It is a system that adds strength to your body, develops all the muscles of every part of your body, brings you health through exercises, and enables you to increase your height.

If you are among those seeking a position and find it difficult to get the job because of your height, you should get started on my "Height Increase Course."

NAT FLEISCHER'S SIMPLE EXERCISES FOR HEIGHT INCREASE.

* * * Here is our *special* offer: * * * THE ENTIRE NINE BOOK-LETS which comprise the course, in addition to "Army Exercises" and "Navy Drills" for only \$3.98,

With every enrollment you * * * will receive FREE a pair of Satin Trunks and a gymnasium shirt.

The respondents hereby admit:

That, according to reliable scientific authority, there is no system of physical training or exercise that will add materially to one's height;

That the courses of exercises set forth in respondents' books entitled "Army Exercises" and "Navy Drills" are not used by the Army and Navy;

That the price of articles represented as "free" to a purchaser of respondents' course of instruction is included in the price charged for such course, and when only the course of instruction is purchased a lesser price is charged.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the practicing of the system of physical training set forth in respondents' course of instruction will increase one's height;

(b) That the system of training set forth in respondents' course of instructions is specially devised for increasing the height of one less than 26 years of age;

(c) That the practicing of the system of physical training set forth in respondents' course of instructions will develop all muscles of every part of the body, or will bring health through exercise;

(d) That any article is "free" when the price thereof is included in the charge for the combination of things offered;

(e) That the price charged for any combination of articles is "special" unless it is lower than the prices regularly charged for such articles; and from making any other claims or assertions of like import.

The respondents further stipulate and agree in soliciting the sale of and selling their books of exercises, to cease and desist from designating them "Army Exercises" or "Navy Drills" or from otherwise representing that the exercises set forth in either of said books conform to physical culture exercises prescribed by the U. S. Army or the U. S. Navy.

The respondents further stipulate and agree in soliciting the sale of and selling their course of instruction in interstate commerce, to cease and desist from designating said course "Height Increase Course" or any other term of like import. (Oct. 23, 1936.)

01531. **Vendor-Advertiser—Washing Fluid.**—D. H. Koumjian, an individual doing business under the trade name of Del-Tox Chemical Co., Baltimore, Md., vendor-advertiser, is engaged in selling a sodium hypochlorite washing fluid designated Del-Tox, and in advertising represented:

DEL-TOX * * * Disinfects as it cleans.

STERILIZES.

For Antiseptic Deodorant Baths.

Soft filmy baby clothes * * * nor must they be boiled to *kill germs*.

DEL-TOX itself bleaches, deodorizes and disinfects as it cleans.

The respondent hereby admits:

That, according to scientific opinion, Del-Tox is so seriously affected by organic matter that when used as a disinfectant, the article to be disinfected must first be thoroughly cleansed and then the solution applied in a dilution at least strong enough to be effective;

That Del-Tox will not sterilize since it cannot be relied upon to kill all germs, including their spores;

That Del-Tox may serve as a deodorant in the bath, but not as an antiseptic in the bath, as it does not appear probable that a sufficient quantity of the solution would be placed in the bath for it to have an antiseptic action.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Del-Tox disinfects as it cleans;

(b) That Del-Tox sterilizes or kills all germs;

(c) That Del-Tox may be used for antiseptic deodorant baths;

and from making any other claims or assertions of like import. (Oct. 28, 1936.)

01532. **Vendor-Advertisers—Poultry Medicines.**—E. D. Brown, B. C. Brown, G. F. Brown, and M. E. Brown, copartners, trading as F. M. Brown's Sons, Sinking Spring, Pa., vendor-advertisers, are engaged in selling certain poultry medicines designated Minex and Camotex, and in advertising represented:

Minex treatment for worms.

* * * if the Minex treatment is properly carried out it will not only rid the birds of worms, but will also increase the appetite and vitality of the birds so as to make stronger growth and higher egg production.

Minex is a life saver and a real money maker when used on wormy birds if these directions are followed.

The treatment is simple, economical and effective in the most stubborn cases.

For worm prevention use the treatment as directed one day each week the year round.

* * * poultry men are using Minex for the treatment of various diseases, including Coccidiosis, White Diarrhea, Cholera, etc., and they find it very econom.

ical to have this great remedy on hand in its pure, original form in one uniform package ready for many uses, * * *

A combination of minerals which has proven in practical experiments by practical poultrymen to be of untold value in the prevention and treatment of certain poultry diseases.

It is a preventative of White Diarrhea, Coccidiosis, Worms and all diseases of the digestive organs in poultry.

Where disease already exists it is an effective remedy, because it kills disease germs and worms, without harm to the birds.

Worms! Range Paralysis! Enteritis! Other Intestinal Disorders! * * * The regular use of Minex will keep your layers free from disease. It is also very effective as a remedy, because it goes to the source of disease and kills the harmful germs and bacteria.

Minex, A Pure Mineral Medicinal Compound for Diarrhea, Coccidiosis, Enteritis, Paralysis, Worms, Fowl Typhoid, Cholera, or any Disease of the Digestive Organs in Poultry.

It is harmless to poultry, but death to disease germs. Use it as a preventive measure as well as a remedy for Diarrhea Coccidiosis, Enteritis, Paralysis, Worms, Fowl Typhoid, Cholera or any Intestinal Disorders.

A valuable aid in the treatment of colds, roup, pox and bronchitis. Has also proven effective in treating blackleads in turkeys.

CAMOTEX. A penetrating and healing spray for poultry.

Colds, Bronchitis, Roup, Diphtheria and Pox are ailments that threaten your flock in Fall and Winter. Overcome them with Camotex, a pure oil spray that penetrates the membranes of the breathing organs and heals the sore and inflamed tissues.

Simply spray Camotex, full strength over and under the birds in the evening * * * Do this every night until the disease disappears. One pint of Camotex will treat 100 birds.

Both *Minex* and *Camotex* are safe * * * Economical and effective, used wherever poultry is raised by practical poultrymen who consider health of flock essential to good profits, and are sold on their merits. You will find both to be money makers when used for the purposes intended.

The respondents hereby admit that according to reliable scientific authority:

Minex is of no value as a treatment for worms or for the prevention or treatment of diarrhea, coccidiosis, paralysis, enteritis and other intestinal disorders, or fowl typhoid or cholera or any disease of the digestive organs of poultry or any other disease in poultry;

Minex is of no value in the prevention or treatment of any species of worms which infest poultry;

Minex will not increase the vitality of poultry so as to make stronger growth and higher egg production;

Camotex is not a penetrating and healing spray for poultry;

Camotex will not overcome colds, roup, bronchitis, diarrhea and pox, or be an effective treatment for or preventive of such diseases or any other disease in poultry.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling

its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Minex is an effective treatment for blackheads in turkeys;
- (b) That Minex is of value in the prevention of or treatment for worms, diarrhea, coccidiosis, paralysis, enteritis or other intestinal disorders, or fowl typhoid or cholera or any disease in poultry;
- (c) That Minex will kill disease germs, or bacteria without harm to the birds;
- (d) That Minex will increase the vitality of poultry so as to make stronger growth and higher egg production;
- (e) That Camotex is a penetrating and healing spray for poultry;
- (f) That Camotex will overcome colds, roup, bronchitis, roup, diphtheria or pox, or is an effective treatment for or preventive of such diseases or any other disease in poultry;

and from making any other claims or assertions of like import. (Oct. 23, 1936.)

01533. Vendor-Advertiser—Beauty Aids.—B & P Co., a corporation, Cleveland, Ohio, vendor-advertiser, is engaged in selling certain preparations designated B & P Wrinkle Eradicators and Frowners, and in advertising represented:

They aid nature while you sleep B & P WRINKLE ERADICATORS AND FROWNERS.

You may enjoy these sports, be free of wrinkles by using B & P WRINKLE ERADICATORS and FROWNERS. Easy to use. Movie actresses exposed to strong lights and sun find these two toilet requisites indispensable, as do MUSICIANS, ARTISTS and SINGERS. Remove unsightly ridges, furrows and crow's feet from your face. B & P WRINKLE ERADICATORS AND FROWNERS help you keep and attain facial beauty.

LADIES of today who desire charm, beauty, youthful appearance and proper facial embellishments, may attain them by using B & P WRINKLE ERADICATORS AND FROWNERS.

Smooth out the wrinkles and crow's feet that mar your beauty while you sleep. GLORIOUS youth and beauty of face restored! Unsightly wrinkles and facial creases erased! Worry-aged faces remade and inspired with new life and vigor! No knife, no danger, no inconvenience, no costly operation! Makes you appear many years younger. Especially used by stage, screen and society women, or artists making public appearances.

DRESSING TABLE HINTS By Two Women.

YOU CAN REMOVE THOSE WRINKLES. A woman in need of something that would smooth the wrinkles in her face, as well as prevent their formation, argued thus: "Why is it that I cannot force them in one direction as well as another?" It is because, through the muscles of your face, you have bidden nature work ever in one direction until the face muscles have naturally accustomed themselves to such action, and have ceased to have the power, to work in any other.

You have lost your control over them. They have done your bidding for years, and now the reverse action is not possible.

We have proved that there is something which gathers up the reins of that dormant muscular control—which harnesses those muscles and holds them back to their proper place, and allows them to regain the strength they have lost.

It stimulates and softens the tender skin, opens the pores and causes them through its gentle moisture, to exude their waste matter and allows nature to fill up the deepening lines.

These Eradicators are in truth instructors—they teach control—they prevent the contortion that causes the wrinkle.

They go to the very root of the trouble and help the cause.

Quietly and without any labor on your part the Wrinkle Eradicator does its work. Thus it gives you the never-to-be-resisted charm of a placid brow.

The respondent hereby admits:

That although these products may tend to retard the formation of wrinkles and frowns, they will not remove either after they are formed.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by using these products one will be free of wrinkles;

(b) That these products will—

1. "Remove" wrinkles, ridges, furrows and crow's feet from the face,
2. Help one attain facial beauty.
3. Enable one to attain charm, beauty, youthful appearance, or facial embellishment,
4. "Restore" youth and beauty of face,
5. "Erase" wrinkles and facial creases,
6. "Remake" worry-aged faces or inspire them with new life and vigor,
7. "Prevent" the formation of wrinkles,
8. Allow nature to fill up the deepening lines,
9. Go to the very root of the trouble and help the cause,
10. Give one a placid brow;

(c) That wrinkles are caused by the loss of control over the facial muscles, or that these products allow the muscles to regain lost strength;

(d) That these products prevent the contortion that causes wrinkles, by teaching control over muscles;

and from making any other claims or assertions of like import. (Oct. 26, 1936.)

01534. Vendor-Advertiser—Medicinal Preparation.—F. AD. Richter & Co., Inc., a corporation, vendor-advertiser, is engaged in selling a preparation designated Anchor Pain Expeller, and in advertising represented:

If you catch cold rub Pain-Expeller on your chest to break up the congestion.

If your muscles get lame and tired, rub on Pain-Expeller, to drive away the stiffness.

Rheumatism and the other ailments like gout, neuralgia, neuritis and sciatica.

When you rub with Pain-Expeller, the medicine penetrates and goes right to the seat of the trouble.

When you need a good liniment to help you rub away * * * aching bones be sure to get Anchor Pain-Expeller.

During the past 65 years millions of people have learned that the quickest and surest relief for pain is an immediate application of Anchor Pain-Expeller.

The minute you apply this famous remedy, relief is yours.

* * * A single application of Anchor Pain-Expeller will drive out the pain almost like magic.

You don't have to wait for relief when you rub on Pain-Expeller. The minute you put it on the pain starts to go immediately.

Pain-Expeller immediately breaks up the congestion before the cold has a chance to get firmly settled.

The instant tingling all over the skin proves to you that Pain-Expeller is penetrating right down through the skin to the sore lame areas below.

* * * its nothing short of magic the way it takes out the kinks and ache from tired muscles and joints.

* * * thanks to the pain relieving qualities of this amazingly effective liniment, you never need suffer again.

For a sore, stiff, painful, aching hip, shoulder, elbow, knee, ankle or muscle, rub on Anchor Pain-Expeller. You will get immediate relief.

In less time than it takes me to tell you about it you will be comforted, invigorated, and refreshed—and every trace of pain, ache or soreness will be banished entirely.

It brings results so much quicker than ordinary liniments that there is no comparison.

In the case of lumbago you have a pain down at the lower end of the spinal column * * * frequently is the result of a cold * * * have someone pour a plentiful supply of Anchor Pain-Expeller in the palm of their hand and slather it all over the whole area.

Usually two applications a day—one in the morning and one at night, will break up the congestion, and give you comfort and relief—complete freedom from the pain.

It is effective. It penetrates. It drives out pain.

* * * a good hard rub with this wonderful liniment will quickly and surely drive out even the most severe agony.

Pain-Expeller will help break up the congestion.

* * * agonizing pains and aches of rheumatism, lumbago, neuritis, and similar aches and pains are banished when Anchor Pain-Expeller was offered to the world.

* * * aches and pains in the joints and muscles of different parts of the body are sometimes due to overwork, sometimes due to exposure, and sometimes due to internal derangement * * * rub on Pain-Expeller.

* * * the minute you rub Anchor Pain-Expeller over the sore, aching muscles or joints * * * pain begins to subside at once.

Even the most stubborn aches are relieved by three or four applications.

When you rub in Pain-Expeller, it sinks through the pores and goes right to the congestion that causes these aches and pains. The relief is immediate.

* * * This penetrating liniment sets up an increase in circulation, which helps to break the congestion and thus relieve the cold.

* * * the minute you get a Charley horse * * * pour on the good, old Anchor Pain-Expeller, and rub it in * * * usually one good application will bring back the old elasticity to the muscles and drive out the aches and pains at the same time.

There was a miner who worked in water up to his knees, day after day * * * he got rheumatism * * * some one told him to try Anchor Pain-Expeller. His wife rubbed him every night * * * at the end of the first month, every trace of ache and pain was gone.

If your work is hard, such as mining, trucking, or in mills, there is nothing that will keep you in better condition than a rub down every night * * * it gives you lots of pep and vigor, besides keeping your muscles free from aches and pains.

Relief is almost instantaneous.

The prescription of a famous doctor.

When you or your children are suffering from colds in the chest, rub your chest with Pain-Expeller and cover with a soft cloth. Thus you will break up your cold and prevent complications which may lead to serious sickness.

After rubbing yourself a few times with Anchor Pain Expeller, you can be rid of all rheumatic pains in your knees, bones, back, joints or arms.

The Anchor Pain Expeller is without doubt one of the foremost remedies for colds and rheumatic pains. It acts almost instantly.

The respondent hereby admits:

That according to reliable medical authority said preparation is not a competent remedy in the treatment of the pathological conditions mentioned in the advertising and its therapeutic value is limited to the palliative relief of minor or superficial pains; that it will penetrate only the superficial layers of the skin, but it will not sink through the pores to the sore spots nor to the seat of the trouble;

That said preparation cannot be relied upon to "banish," or "drive out" pain;

That there is no evidence that said preparation is the prescription of a famous doctor.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent remedy in the treatment of—
Rheumatism,
Gout,
Neuritis, or
Sciatica;

(b) That said product is a competent remedy in the treatment of—
Stiff hip, shoulder, elbow, knee or ankle;
Painful hip, shoulder, elbow, knee or ankle;
Aching hip, shoulder, elbow, knee or ankle;

(c) That said product is a competent remedy in the treatment of coughs, or colds, or that its use will prevent colds or the complications that may follow a cold;

(d) That said product will penetrate through the pores to the sore spots or to the seat of the trouble; or that it will do more than penetrate through the superficial layers of the skin;

(e) That said product—

1. Will afford relief immediately, almost instantly or within one minute;
2. Brings results quicker than ordinary liniment;
3. Drives out pain or agony;
4. Gives one pep or vigor;
5. Is the prescription of a famous doctor;
6. Acts almost instantly;
7. Drives out pain;

(f) That by the use of said preparation one need never suffer again;

(g) That said product will break up congestion, or give freedom from pain;

(h) That said preparation has "banished" pains and aches from rheumatism, lumbago or neuritis;

(i) That any beneficial results may be expected from the use of said preparation for pains in joints or muscles due to external derangement;

(j) That said preparation will relieve stubborn cases;

and from making any other claims or assertions of like import. (Oct. 26, 1936.)

01535. Vendor-Advertiser—Beauty Aids.—Samuel Bernstein Hair Co., a corporation, Boston, Mass., vendor-advertiser, is engaged in selling certain products designated Avol Beauty Preparations and in advertising represented:

Cuticle Oil.

Cuticle Remover.

Muscle Oil.

Tissue Cream.

The New Hair Conditioner 'FOME' * * * It cleanses, reconditions and imparts a beautiful sheen and lustre to the hair.

FOME—Hair Conditioner.

* * * When you use FOME, the new hair conditioner, which cleanses and reconditions the hair of your most fussy patron.

FOME imparts a beautiful sheen and lustre and softens dyed, bleached or over-waved hair.

Apply FOME before your next wave, dye or bleach and you are assured of the best results.

Avol Kwiksett works faster and while it works, it nourishes the scalp.

The respondent hereby admits:

That according to reliable scientific authority, there are no oils or creams that may be properly designated "Cuticle Oil", "Cuticle Remover", "Muscle Oil", or "Tissue Cream", since there are no oils or creams which have specific action on the cuticle, muscles or tissues;

That the preparation "Fome" will not do more than cleanse the hair;

That the preparation "Kwiksett" will not nourish the scalp.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the preparation "Kwiksett" will nourish the scalp;
- (b) That the preparation "Fome" will recondition the hair;
- (c) That the preparation "Fome" will impart a lustre or sheen to the hair, or that it will soften the hair;
- (d) That the use of "Fome" before waving, dyeing or bleaching the hair will assure the best results;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of said products in interstate commerce, to cease and desist from designating or describing any of them as "Cuticle Oil", "Cuticle Remover", "Muscle Oil", "Tissue Cream", or "Hair Conditioner". (Oct. 26, 1936.)

01536. Vendor-Advertiser — Medicinal Preparation.— Dr. Pierre Chemical Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a suppository designated Boro-Pheno-Form, and in advertising represented:

Their action is positive.

The answer to the problem of feminine hygiene.

To the perplexed woman seeking a dependable answer to the vital problem of personal hygiene, we advise BORO-PHENO-FORM.

A boon to the mind and health of every married woman.

Why gamble with dangerous methods of Marriage Hygiene?

Must every woman live constantly in fear of suffering? "Not at all!" say many thousands who have found new happiness and confidence by using BOROPHENO-FORM.

Banish doubt and fear from any mind!

BORO-PHENO-FORM Suppositories give DOUBLE effectiveness—IMMEDIATE effectiveness on application and CONTINUED effectiveness afterward. Amazingly powerful.

Their action is positive, soothing and odorless—safeguarding health and preserving peace of mind.

RELIABLE.

Replaced undependables, often dangerous chemicals.

Dependable protectant.

The simple way for safeguarding health and preserving mental comfort.

Seaman, Ohio, June 11, 1935. Dear Sirs: Have been using Boro-Pheno-Form ever since my baby was born. My health was run down and I spent most of my time in bed. Now that I have been using Boro-Pheno-Form I feel as "peppy" as I did before I was married, and I will never be without them. I have recommended Boro-Pheno-Form to my sister-in-law and I am sure she will become one of your customers. Respectfully, Mrs. C. C.

Enon Valley, Pa., May 4, 1935. Dear Sirs: I have used your Boro-Pheno-Form for 10 years. I find my health and peace of mind very greatly relieved by their use. I am anxious that my friends learn about Boro-Pheno-Form, in fact all women. Mrs. J. B. W.

Mitchell, S. Dak., July 20, 1931. Gentlemen: I have used your Boro-Pheno-Form for four years. They are a wonderful help to all. They have given me good health again after years of worry and ill health. Sincerely, Mrs. A. B.

Here is the * * * safest and surest method of Feminine Hygiene yet discovered.

Women are now offered that perfect security which brings peace of mind.

THE ANSWER TO THE PROBLEM OF MARRIAGE HYGIENE.

A Feminine Hygiene preparation must do the work expected of it. It must be Safe. It must be Sure

BORO-PHENO-FORM was formulated with these fundamental requirements in mind. BORO-PHENO-FORM is perfectly safe. Physicians will testify to the utter harmlessness and complete effectiveness for the purpose of its ingredients.

The cocoa butter base melts rapidly at body heat, releasing germ destroying agents within two minutes after the cone is inserted.

The action of BORO-PHENO-FORM is positive and Beneficial.

Regular use of BORO-PHENO-FORM tends to relieve inflammation. Some physicians say that trouble during menstruation is often due to lack of sanitary precaution at other times.

BORO-PHENO-FORM carries the highest recommendation of the medical profession.

The respondent hereby admits:

That according to scientific opinion Boro-Pheno-Form is a contraceptive, but in order to be effective a number of physical factors have to be taken into consideration and it cannot, therefore, be claimed that the action of this suppository is positive, reliable or dependable.

That although Boro-Pheno-Form has certain value in feminine hygiene, it is not the safest or surest method of feminine hygiene yet discovered, nor will it banish fear and doubt from the female mind and afford perfect security in marriage hygiene;

That Boro-Pheno-Form will not safeguard health.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise;

(a) That the action of Boro-Pheno-Form as a contraceptive is positive and reliable;

(b) That Boro-Pheno-Form is the safest and surest method of feminine hygiene yet discovered;

(c) That Boro-Pheno-Form is a dependable answer to the problem of feminine hygiene and has replaced the use of independable and dangerous chemicals;

(d) That Boro-Pheno-Form does away with the gamble with dangerous methods of feminine hygiene;

(e) That Boro-Pheno-Form is amazingly powerful;

(f) That Boro-Pheno-Form will preserve the peace of mind and afford perfect security in marriage hygiene;

(g) That Boro-Pheno-Form is a boon to the mind and health of every woman;

(h) That Boro-Pheno-Form will banish doubt and fear;

(i) That Boro-Pheno-Form brought new happiness to many thousands of women and they need not live in constant fear of suffering;

(j) That the regular use of Boro-Pheno-Form tends to relieve inflammation and may avoid trouble during menstruation;

(k) That Boro-Pheno-Form will safeguard health;

(l) That cocoa butter base in Boro-Pheno-Form melts rapidly at body heat releasing germ destroying agents within two minutes;

(m) That Boro-Pheno-Form is helpful in run-down conditions after childbirth and makes married women feel as "peppy" after childbirth as before marriage;

(n) That Boro-Pheno-Form will give a woman good health after years of worry and ill-health;

(o) That Boro-Pheno-Form Suppositories give Double effectiveness—Immediate effectiveness on application and Continued effectiveness afterward;

(p) That Boro-Pheno-Form has received the highest recommendation of the medical profession;

and from making any other claims or assertions of like import. (Oct. 27, 1936.)

01537. Vendor-Advertiser—Medicinal Preparation.—Humphrey's Homeopathic Co., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Humphrey's 77, and in advertising represented:

They cured me when the doctor failed.

It is just recently that I cured my son with your remedy and have saved a 10-day Doctor's fee.

Get rid of a cold the minute you feel it coming on * * * Get yourself some Humphrey's #77 for colds.

They're *scientific* remedies. HUMPHREYS—they're modern up-to-date formulas prepared by the house that has served the public for 100 years.

Humphrey's #77 for colds * * * That's a real remedy—dependable.

You're on the right track when you know what's the matter and what to do for it * * * your Humphrey's Manual tells you that.

Humphrey's Remedies are indispensable, home folks know that they are simple, safe, reliable and economical.

HUMPHREY'S REMEDIES backed by a reputation for dependability of nearly a hundred years, are based on modern scientific formulas.

She wants to be sure she is giving her family the safest, most reliable medicines science can produce. That is why so many thousands of households depend upon Humphreys.

The respondent hereby admits:

That, according to the weight of scientific authority, any benefits to be derived from taking Humphrey's #77 for colds would be palliative and this preparation cannot be depended upon to cure a cold.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Humphrey's #77 for colds

1. Will cure a cold;
2. Will get rid of a cold the minute one feels it coming on;
3. Is a "scientific" remedy;
4. Is a "real" remedy or is dependable; or
5. Is indispensable;

(b) That Humphrey's Remedies, backed by a reputation for dependability of nearly a hundred years, are based on modern scientific formulas;

(c) That Humphrey's Manual tells you what's the matter and what to do for it;

(d) That Humphrey's #77 for colds is the safest, most reliable medicine science can produce; and from making any other claims or assertions of like import. (Oct. 27, 1936.)

01538. Vendor-Advertiser—Treatment for Corns, Callouses, Bunions, Etc.—Kincox Co., Inc., a corporation, Rutland, Vt., vendor-advertiser, is engaged in selling a treatment for corns, callouses, bunions, etc., designated Callous-Ease, and in advertising represented:

* * * The moment you apply Callous-Ease all pain stops and in a short time every callous and corn is absorbed and gone * * *

* * * Callous-Ease, the new velvet-soft Moleskin with its soothing Kincox medication ends painful foot troubles instantly * * * this pain chasing medication draws out all soreness and gently, safely absorbs hard growths * * *

* * * Follow this treatment for soft corns, bunions * * *

* * * The moment you apply Callous-Ease, all discomfort vanishes * * *

* * * An occasional application of Callous-Ease will prevent the return of callouses and corns.

* * * Callous-Ease—For Callouses, Bunions, Tender Spots * * *

Callous-Ease is double-quick relief for aching feet—it puts foot pains to sleep! This soothing, comforting action is due to its Kincox medication that goes right to the seat of trouble and chases pain out in a hurry * * *

* * * The adhesive side of Callous-Ease is impregnated with a penetrating chaser which takes away discomfort and softens and absorbs the hardened tissues. It ends pain quickly and protects each step so new ones can't form * * *

* * * No matter if you have a corn, callous or bunion * * * that simply won't go away, if you haven't tried Callous-Ease, you are missing the one chance in a million!

The adhesive side of Callous-Ease is impregnated with an exclusive, penetrating pain chaser, which takes away all discomfort at once, and softens and absorbs the hardened tissues * * *

* * * New Callous Relief Ends Pain at Once * * * Corns, Tender Spots Disappear—A new ideal! Nothing else like it. Brings instant relief to aching, calloused, tender feet. The moment you apply Callous-Ease all pain stops. Shortly the callous or corn is absorbed and gone * * *

* * * Feet hurt? New Way Relieves Pains—Ends Callouses, Corns, * * *
 * * * New Way to End Callouses, Corns * * * Velvet Soft Cushion—
 Banishes Pain—* * *

The respondent hereby admits:

That respondent's product cannot be depended upon to produce results to the extent represented in the foregoing representations.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product "absorbs" corns, callouses, tender spots, or hard growths;

(b) That respondent's product is a competent treatment or an effective remedy for "foot troubles", unless the representations are confined to the relief of those conditions of the foot for which the product may be efficacious;

(c) That the respondent's product will end or banish "foot troubles", corns, callouses, hard growths, bunions, tender spots;

(d) That respondent's product will prevent callouses, corns, bunions, hard growths, or tender spots;

(e) That respondent's product "goes to the seat of the trouble";

(f) That by use of respondent's product in the treatment of "hardened tissues", "new ones can't form";

(g) That respondent's product "ends" or "banishes" pain;

(h) That respondent's product:

1. Chases pain out in a hurry;

2. "Takes away pain or discomfort at once";

3. "Puts foot pains to sleep";

(i) That the product is "instant" in its action, or that "the moment you apply Callous-Ease the pain stops", or that "all discomfort vanishes", or that "if you haven't tried Callous-Ease you are missing one chance in a million";

and from making any other claims or assertions of like import. (Oct. 27, 1936.)

01539. Vendor-Advertiser—Cleaning Powder.—Gramercy Chemical Co., Inc., a corporation, doing business under the trade name of Tarson Chemical Co., New York, N. Y., vendor-advertiser, is engaged in selling a cleaning powder designated "Tarson" and in advertising represented:

New Discovery Amazes the World.

Cleans by an entirely new chemico-electro principle.

Absolutely harmless to the hands and finest fabrics.

For Washing Woolens.

For Washing * * * Silks.

Has no equal for removing perspiration odors and stains from clothes.

Takes off perspiration from under things much quicker and thoroughly than anything else.

Tarson leaves woolens soft and fluffy.

SOAKING THE CLOTHES * * * Tarson is the greatest water softener.

Has no equal for washing dishes.

There is nothing to equal Tarson.

Beats everything there is.

Pipes—Tarson quickly removes the accumulated grease.

Floors—whether they be wooden, marble, linoleum, rubber, or any other kind, are made clean and fresh looking with Tarson.

TARSON * * * 10 times quicker than * * * soap.

One tablespoonful of TARSON to a gallon of water will do more work than a package of soap.

TARSON is a snow white powder which dissolves instantly in water without making mussy suds—and is the greatest emulsifier of grease.

Cleans everything quicker than lightning.

Tarson cleans like magic.

Its action is positively miraculous.

King of cleaners.

Cleans so magically.

Magic Cleaner.

The respondent hereby admits:

That Tarson is of value in washing or cleansing certain fabrics, but is not a new discovery nor does it clean by an entirely new chemico-electro principle;

That Tarson may be safely used in washing, or cleaning washable fabrics, but cannot be recommended for all fabrics, especially silk and woolens;

That Tarson has many uses in washing and cleaning, but it cannot be said that it has no equal or acts more quickly than all other preparations.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from misrepresenting directly or otherwise:

(a) That Tarson is a new discovery and cleans by an entirely new chemico-electro principle;

(b) That Tarson is absolutely harmless to the hands and finest fabrics;

(c) That Tarson may be used in washing woolens or silks;

(d) That Tarson has no equal for removing perspiration odors and stains from clothes;

(e) That Tarson leaves woolens soft and fluffy;

(f) That Tarson is the greatest water softener;

(g) That Tarson has no equal for washing dishes;

(h) That Tarson "beats everything there is";

(i) That Tarson quickly removes the accumulated grease from pipes;

(j) That Tarson will make linoleum flooring clean and fresh looking;

(k) That Tarson is ten times quicker than soap;

(l) That one tablespoonful of Tarson to a gallon of water will do more work than a package of soap;

(m) That Tarson is the greatest emulsifier of grease;

(n) That Tarson cleans everything "quicker than lightning";

and from making any other claims or assertions of like import. (Oct. 28, 1936.)

01540. **Vendor-Advertiser—Medicinal Preparation.**—D. Friedman, M. D., an individual, Hollywood, Calif., vendor-advertiser, is engaged in selling a treatment for Asthma, Sinus and Hay Fever, and in advertising represented:

* * * complete relief just from the trial * * * enable me to supply the formula to bring the results that both of us so earnestly desire.

In fact, I would like to caution you against taking medicines sold by laymen and not prescribed by physicians which may give you only temporary relief, but allow your ailment to become chronic.

I am in a position to send you the medicines to fit your particular case, just as if we were talking face to face * * *

* * * That is the intelligent way to get at the root of your ailment and eliminate the trouble at its source * * *

My latest discovery, which is a scientific home treatment for these diseases * * * these formulae are intended not only for relief, but are designed to get at the root of the trouble so the symptoms may not return.

In this way the patient receives individual treatment as if we were talking face to face * * *

* * * I wish to caution you of the necessity of the after-treatment which is most essential so that your ailment may not return * * *

* * * for permanent results * * *

My medicines contain no narcotics and are not habit forming.

* * * after suffering with asthma for 28 long years, and now, to be free from it is a priceless gift.

Dr. Friedman's Formulas contain no narcotics.

Since it has powerful antiseptic and shrinking properties, it will shrink the congested mucous membranes, promoting drainage from the sinuses.

Being an antiseptic, it should prevent the development of germs, infections and sinus trouble.

By using it once or twice a day, it should act as a preventative to those susceptible to frequent colds.

Dr. David Friedman is a celebrated and distinguished specialist with more than thirty years of active practice in New York City. In perfecting a method by which his treatment is available to everyone in his or her own home, he has taken a step which will mean relief and joy to hundreds of thousands of men and women throughout the United States.

When the patient fills out the Symptom Chart enclosed with this booklet I am able to judge what treatment he requires.

This, my latest successful treatment, has been developed by me after more than 30 years experience in hospitals and private practice, and as former Chief

for 14 years of Ear, Nose and Throat Clinic of a famous hospital in New York City.

For fifteen years I have been a sufferer of Asthma and Hay Fever * * * I first called on you September 22, 1933, and after taking your treatment I noticed an immediate improvement * * * I now feel perfectly well.

I have been at death's door many times and want to say your treatment has brought me out of bed so I can help myself again.

Then I tried Dr. Friedman's treatment and was immediately relieved. After two months' treatment I gained weight and am now completely well * * *

After continuing your treatment for a few months, I am entirely healed.

Our little girl has had Asthma since she was 18 months old. She is now 7 years old. We have tried everything we ever heard of with no results * * * We now feel your treatment has absolutely cured her.

I was suffering terribly at the time it arrived. It came on a Wednesday and that afternoon I took a tablet at 4 o'clock and another when I went to bed and was not bothered with Asthma.

I am taking this means of thanking you for the return of health which I am able to enjoy after taking your treatments for the past three months.

The one treatment you gave me at your office and the two preparations for home treatment has completely banished my ailment in less than three weeks.

Several times during the winter, I have felt a cold coming on and in each case by using the spray a few times, the cold was completely gone.

He improved immediately after your treatment and now is entirely free from his Asthmatic spells * * *

She took two tablets and that knocked out her spell.

The respondent hereby admits:

That, while the prescriptions submitted may temporarily and to a limited extent relieve some of the acute symptoms of hay fever, asthma and some forms of bronchitis and may constitute an aid in connection with other treatment of sinus, they cannot be considered a complete treatment for the conditions mentioned, nor will they get to the source of the condition or relieve the cause of the condition; but they are strictly palliative in action;

That, according to the consensus of reliable medical opinion, correct and accurate diagnosis is impossible by mail order methods or by the use of a "Symptom Chart" and that correct and accurate diagnosis is the basis of the efficacy of the treatment of such ailments as sinus, asthma, catarrh, hay fever, and similar ailments;

That the formulae submitted contain certain drugs that are capable of producing harmful effects.

The respondent hereby stipulates and agrees in soliciting the sale of his product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's treatment will give complete relief just from the trial;

(b) That respondent is in a position to send you the medicine to fit your particular case, just as if we were talking face to face;

(c) That the formulae sold by respondent is a scientific home treatment for these diseases;

(d) That the formulae sold by the respondent will get at the root of the trouble and prevent a return of the symptoms;

(e) That the formulae sold by respondent will give permanent results;

(f) That respondent's medicines contain no narcotics and are not habit forming;

(g) That the formulae sold by respondent will render one free from asthma;

(h) That the formulae sold by respondent contain powerful anti-septic and shrinking properties, or will shrink congested mucous membranes, or promote drainage from the sinuses;

(i) That the formulae sold by respondent will prevent the development of germs, infections and sinus troubles;

(j) That the use of respondent's formulae once or twice a day will prevent colds;

(k) That respondent is able to diagnose or to judge what treatments he requires from a Symptom Chart filled out by the patient;

(l) That respondent's treatment will

1. Make one, having suffered with asthma and hay fever for fifteen years, feel perfectly well;
2. Bring a patient, who has been at death's door many times, out of bed;
3. Entirely heal, after a few months;
4. Will "absolutely cure" anyone of asthma;
5. Will "completely banish" ailments;
6. Will abort a cold; or
7. Will "knock out her spell";

(m) That one tablet at 4 o'clock and another on going to bed will prevent one being bothered with asthma; and from making any other claims or assertions of like import. (Oct. 28, 1936.)

01541. Vendor-Advertiser—Finger Nail Preparation.—Nu-Dell Manufacturing Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a preparation designated Nu-Life Nail Conditioner, and in advertising represented:

A Corrective Treatment for CHIPPING, BREAKING, PEELING NAILS.
KEEPS NAILS STRONG, HEALTHY, SMOOTH, PLIABLE.
PROTECTS, LUBRICATES AND NOURISHES THE NAILS.

The only way to have strong, healthy nails is to replace the natural oils which are dried out. When these oils have been replaced, and the nails are back to their naturally healthy, lustrous state, no amount of polish remover, or soap and water can harm them.

"NU-LIFE" Nail Conditioner for replenishing the natural oils and restoring the original flexibility and natural healthy lustre of the nails.

Corrects hangnails.

NU-LIFE NAIL CONDITIONER.

The respondent hereby admits:

That no external preparation can nourish the nails;

That because of the oil contained in this preparation, it may tend to reduce the brittleness of the nails, but that its therapeutic effect is limited to such action;

That no such preparation as this can actually renew life in a nail.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this preparation will lubricate and nourish the nails, or that it will keep nails strong, healthy, smooth, and pliable, or that it, constitutes a competent treatment for chipping, breaking, peeling of nails;

(b) That this product replaces or replenishes the natural oils of the nails;

(c) That this product corrects hangnails;

and from making any other claims or asertions of like import.

The respondent further stipulates and agrees not to make any claim to the effect that this preparation or any element therein contained, will give new life to or renew the life of a nail. (Oct. 29, 1936.)

01542. Vendor-Advertiser—Chemical Solution.—William Omness, an individual, doing business under the trade name of Western Michigan Chemical Co., Muskegon, Mich., vendor-advertiser, is engaged in selling Chlorite and in advertising represented:

Antiseptic—Deodorant.

Chlorite kills bacteria and whitens clothes.

Bread Boxes, Drain Pipes, Garbage Cans, Sick Rooms, etc.—Quarter cupful CHLORITE to one quart of water. Rinse well.

“Dakin’s Solution”—One part CHLORITE to twelve parts of water.

Dental Plates—Five drops of CHLORITE to one half glass of water. Let stand over night.

Toilet Bowls—one half cupful Chlorite in bowl. Then add two tablespoonfuls vinegar, let stand over night.

Procedure for removing food, medicine, ink, grass, mildew, scorch and other stains. Add one tablespoonful CHLORITE to pint of water. Shuffle garment in solution until stain disappears. (Three to ten minutes usually required).

Wash and rinse garment well. If yellow stain remains, rinse in vinegar or lemon juice.

Triple action.

“Athlete’s Foot”—Soak feet daily for five minutes in solution of two tablespoonfuls CHLORITE to quart of water. Remove loose skin; continue soaking fifteen minutes.

The respondent hereby admits:

That, according to the weight of scientific authority, Chlorite cannot be depended upon to kill all bacteria, including their spores;

That, according to the weight of scientific authority, a product of this kind cannot be depended upon as an antiseptic or a deodorant;

That Chlorite will not disinfect bread boxes, drain pipes, garbage cans, sick room equipment, toilet bowls, etc., unless the surface to be disinfected is first thoroughly cleansed and the solution completely stirred over the entire surface;

That, in order to be beneficial in the treatment of Athlete's Foot, the feet must first be thoroughly cleansed before being soaked in the solution;

That, according to the weight of scientific authority, one part of Chlorite to 12 parts of water would not make "Dakin's Solution";

That, according to the weight of scientific authority, five drops of Chlorite to one-half glass of water would not be effective as a cleanser or disinfectant for dental plates;

That Chlorite does not have "triple action."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Chlorite is antiseptic;

(b) That Chlorite is a deodorant, unless qualified by the statement that it will not destroy all odors;

(c) That Chlorite kills bacteria, unless qualified by the statement that it will not kill all bacteria, including their spores;

(d) That Chlorite will disinfect bread boxes, drain pipes, garbage cans, sick room equipment, toilet bowls, etc., unless directions are given for first thoroughly cleansing the surface to be disinfected and then completely stirring or rubbing the solution over the entire surface;

(e) That Chlorite is beneficial in the treatment of Athlete's Foot, unless directions are given for thoroughly cleansing the feet before soaking in the solution;

(f) That five drops of Chlorite to one half glass of water is effective as a cleanser or disinfectant for dental plates;

(g) That one part of Chlorite to twelve parts of water will make "Dakin's Solution";

(h) That Chlorite has "triple action";

and from making any other claims or assertions of like import. (Oct. 29, 1936.)

01543. Vendor-Advertiser—Medicinal Preparation.—McKesson & Robbins, Inc., a corporation, Bridgeport, Conn., operating under the trade name of Spurlock-Neal Co., Nashville, Tenn., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Carboil, and in advertising represented:

Boils, Cuts, Burns and Bites.

Carboil * * * allays inflammation; reduces swelling; lessens tension; quickly heals.

Relieve these painful, unsightly conditions with powerfully medicated Carboil. Results guaranteed.

Also use for festers, risings.

Boils. Instantly eased. Quickly Healed.

Use Carboil for Boils.

The respondent hereby admits:

That Carboil is not "powerfully" medicated, but is a mild counter-irritant, antiseptic and analgesic which would tend to reduce the inflammation and pain and hasten the maturity and suppuration of boils;

That the therapeutic properties of the preparation are not such as to render it a competent treatment for cuts, festers, risings, burns, and bites, unless limited to minor cuts, festers, and burns, to temporary risings, and to non-poisonous bites;

That the preparation will not quickly heal since healing is a function of the living tissue; nor will it "instantly" ease the pain of boils;

That the respondent does not guarantee results from the use of the preparation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Carboil is a competent treatment for cuts, festers, risings, burns, and bites, unless limited to minor cuts, festers, and burns, to temporary risings and to nonpoisonous bites;

(b) That Carboil is more than a mild antiseptic, counter-irritant and analgesic that tends to reduce inflammation and pain and hasten the maturity and suppuration of boils;

(c) That the preparation will quickly heal, is "powerfully" medicated, or will "instantly" ease the pain of boils;

(d) That results are guaranteed;

and from making any other claims or assertions of like import. (Oct. 30, 1936.)

01544. Vendor-Advertiser—Booklet.—D. J. Hinman, and individual, doing business under the trade name of Hinman Publishing Co., New York, N. Y., vendor-advertiser, is engaged in selling a pamphlet designated "The Secret of M. S. R." or the "Realization Secret" and in advertising represented:

I have discovered a secret that startles me. It has proved to be an Aladdin's Lamp. It gives me anything I want.

My friend smiled. Said he, "You have revealed to yourself the last, ultimate secret of every religion, every system of metaphysics and mental science on the

face of the earth. You have the secret, the key to happiness, health, wealth and the things you desire. If everybody knew what you know there would be no need for religions, or systems, or codes—no need for books, or lectures, or courses. All new thought sciences are based on the central idea, so simple that it can be expressed in one sentence.”

Nothing you desire that you cannot have.

* * * “this is a secret of happiness on earth. Put that to work in your daily life (and it is easy) and there is nothing on this earth that you desire that you cannot have.”

I merely have to desire a new car, or a trip to Europe, relief from pain, or a solution of business, domestic or household problems—and behold, I have it!

I don't need money. My secret gives me all I can use.

The distribution costs require me to ask a dollar for my newly discovered secret, which ought to just about pay for these costs. I call it the “realization secret.” The secret is in the first sentence. Then I use about 3,500 words to make it entirely clear to you, with many practical examples of the secret's application.

The respondent hereby admits:

That no evidence has been submitted to substantiate the claims that the pamphlet entitled “The Secret of M. S. R.,” or the “Realization Secret” reveals any rational solution for the material conditions of one's life;

That not all religions, systems of metaphysics and mental science can be based on a central idea, or expressed in one sentence;

That said publication is sold for the purpose of making money, and is sold for more than the cost of distribution;

That no teaching yet devised by man can enable one to have whatever he may desire.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the pamphlet entitled “The Secret of M. S. R.” or the “Realization Secret” contains any “Secret” or any other information not generally available to students of various schools of mental science;

(b) That by either reading said pamphlet or practicing its teachings one will be enabled to have everything or anything he desires;

(c) That said pamphlet contains the ultimate secret of every religion, or of every system of metaphysics, or of every system of mental science, or is the key that opens the way to either health or wealth;

(d) That all religions, systems of metaphysics and mental sciences are based on a central idea that can be expressed in one sentence;

(e) That by the study of said pamphlet one may “realize” or materialize into a physical fact his desire to—

1. Have a new car;
2. Go on a trip to Europe;
3. Get relief from pain;
4. Solve business, domestic or household problems;

(f) That the secret contained in said pamphlet gives any one all the money he or she can use;

(g) Inferentially or by direct statement, that the amount charged for said pamphlet is no more than enough to pay the distribution costs; and from making any other claims or assertions of like import. (Nov. 2, 1936.)

01545. Vendor-Advertiser—Medicinal Preparation.—R. M. Kallejian, an individual, operating under the trade name of Prapion Laboratories, Los Angeles, Calif., vendor-advertiser, is engaged in selling a medicinal preparation designated "Prapion Remedy" and in advertising represented:

The question which naturally arises with anyone who is suffering from stomach disorders is, "Will PRAPION'S REMEDY be appropriate in my case and will I get relief?" It can be truthfully said that in cases of gaseous and bilious discomforts of the stomach, the patient has received distinct relief when directions have been followed faithfully and punctually.

It is the result of years of experiments with patients suffering from nervous indigestion, hyperacidity, biliousness, dizziness, gas, and nausea. All of these conditions combined, will naturally cause restlessness and sleeplessness at night. Just as soon as these conditions have been corrected, you will enjoy a full night's sleep and rest.

I was very skeptical of using your stomach remedy at first but must admit that after using one bottle my stomach ailments all disappeared. However, I continue to use four more bottles to be sure that none of these troubles would reoccur. I have now discontinued the use of your medicine and feel wonderful.

Only those who have suffered the pangs of ulcerations can sympathize with those likewise afflicted. In most cases those suffering from this condition can attribute their condition to neglect in the early inception of the irregularity.

PRAPION'S REMEDY has proven its definite value in thousands of cases of stomachic conditions. Thousands have discovered ready and lasting relief through the use of this outstanding remedy.

PRAPION'S REMEDY contains 19 different ingredients.

I wish to take this means to thank you for the excellent benefit I've received by taking PRAPION stomach remedy. I've been troubled as you know, for some years with gastro-intestinal disorders, including ulcers, and among the many reliefs and remedies I've taken, can truthfully say yours is the only one which has dispelled those terrible gas pains and at the same time given me the assurance that I can get a restful sleep. PRAPION'S REMEDY is an Oasis of relief for sufferers of alimentary disturbance."

I have taken all kinds of medicine and seen many, many physicians to see if I could get well and rid myself of my stomach ulcers, pains, nausea, etc. My trouble was of long standing and I did not think your medicine would help me at all. I want to say, however, that only one bottle fixed me up so well I couldn't believe it myself.

Stomachic distress often brings about a state of nervous irritability and restlessness which interferes with the rest at night and greatly lowers vitality and makes the victims susceptible to the ravages of disease. The mental agony of gnawing hunger, and being unable to eat because of the pains that follow, is indeed a sad state of existence. This may be an indication of hyperacidity, a common disturbance. Hyperacid Gastritis is more often noted by unmistakable signs of excess acid. Hyperacid Gastritis finds expression in indigestion, gas, vomiting,

sour stomach, nervousness, constipation, fitful sleep, dizziness, and general debility.

Just as I told you when I bought the first bottle, I had been troubled with ulcers of the stomach and if I should eat the least thing that had any starch in it, I would swell up with gas. Your medicine has corrected this almost entirely and I think another bottle will do the work. I ate some potatoes and white bread last night just to try it out, and to my astonishment, I had no pain or gas, and I wish to pass the good word along for the benefit of humanity.

Everyone with Sore or Inflamed STOMACH.

The respondent hereby admits:

That although this preparation may be of value as a sedative, astringent, and laxative, it is not regarded by current medical opinion as a competent treatment, or as an effective remedy in the various pathological conditions of the stomach.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Prapion Remedy is a competent treatment or an effective remedy for all stomach disorders, or for—

- | | |
|-------------------------|----------------------------------|
| 1. Nervous indigestion, | 9. Stomachic conditions, |
| 2. Hyperacidity, | 10. Gastro-Intestinal disorders, |
| 3. Biliousness, | 11. Ailmentary disturbances, |
| 4. Dizziness, | 12. Stomachic distress, |
| 5. Gas, | 13. Sour Stomach, |
| 6. Nausea, | 14. Constipation, |
| 7. Stomach ailments, | 15. General debility, or |
| 8. Ulcerations, | 16. Sore or inflamed stomach; |

(b) That this preparation will rid one of any difficulty;

(c) That this product is a stomach remedy;

and from making any other claims or assertions of like import. (Nov. 3, 1936.)

01546. Vendor-Advertiser — Medicinal Preparations.— David H. Fulton, an individual, trading as The Vendol Co., Baltimore, Md., vendor-advertiser, is engaged in selling a liquid preparation designated Vendol and Vendol Laxative Tablets, and in advertising represented:

* * * VENDOL to all who suffer from stomach trouble, constipation, sluggish liver or weak kidneys * * * what a truly remarkable remedy Vendol really is. * * *

* * * Vendol will help you as it has thousands of people * * * whether it will end your troubles in a day or a week, can only be proven by taking the medicine. * * *

* * * VENDOL is a BALANCED formula. * * *

* * * It is a medicine which Nature herself might have compounded. * * *

* * * VENDOL quickly relieves sour stomach, and in ten minutes all signs of gas, pains, belching and bloating will disappear. * * *

* * * It works off the liver without griping and ends constipation which relieves dizziness, headaches, spots before the eyes, coated tongue and foul breath.—It relieves pains in the back, arms, muscles and joints, puts a stop to getting up all during the night, by flushing out the impurities which may have been lodged in your system for months.

If you knew from a medical standpoint the damage constipation does to the system, you would lose no time in taking a treatment of Vendol and clearing your system of this dread disease. * * * Vendol will quickly relieve those disagreeable feelings * * * helps 9 out of 10 people.

* * * cut this coupon now and get one of these trial size bottles. Remember, this offer is good only on Friday and Saturday of this week.

Many parents are giving Vendol to build up run down, nervous, bilious children.

* * * parents are finding out what a wonderful tonic Vendol is for nervous, pale, sickly children and for those troubled with constipation, biliousness, and poor appetites.

I always had a coated tongue, my complexion was sallow and I was constipated all the time. I was bothered with sour stomach, gas and cramps and often felt dizzy. Vendol has made me feel grand and now I have a big appetite but nothing I eat disagrees with my stomach. My bowels act regularly every day, never feel dizzy any more and my complexion has taken on a healthy appearance. I sleep sound, and just feel grand since taking Vendol.

I had been troubled for years with poor digestion which gave me spells of gas in the stomach, shortness of breath, sour, acid risings and heartburn. I took various medicines but Vendol has completely ended these troubles.

FOUR GREAT PURPOSES OF VENDOL—to provide a tonic that will build up and strengthen a run-down condition of the system; a tonic that will create a good appetite, aid the stomach in the process of digestion thereby renewing strength and energy * * * (1) TO STRENGTHEN THE STOMACH. A person with a perfect digestion never suffers from cramps, heartburn; acid risings or palpitation of the heart and shortness of breath caused by gas in the stomach, (2) TO END CONSTIPATION. (3) TO CALM THE NERVES * * *

BLAME THE STOMACH—if you suffer from indigestion, dyspepsia, shortness of breath, heart fluttering caused by gastritis, cramps, acid risings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, bad breath, and poor sleep. But you can get quick relief from these troubles. Take Vendol * * * it increases the secretions in the mouth and stomach which are a great aid to perfect digestion.

I had a sore spot in the pit of my stomach for six years and just couldn't get rid of it, but two bottles of Vendol have given me marvelous relief. I found that Vendol also got my bowels to moving regularly every day.

My whole system has been built up by this splendid tonic.

VENDOL HAS NO EQUAL FOR STOMACH TROUBLES.

Here is a message for every parent who has a child that is under weight, has no appetite, with constipated bowels and troubled with nervousness. It tells how the great herbal medicine, Vendol, corrected these troubles.

I was advised to take Vendol and it is simply marvelous how my feelings have changed since taking three bottles. The stomach disorders have all disappeared, my bowels are regular, never feel dizzy and I get wonderful sleep. My whole system has been restored.

Vendol ends gas, sourness and bloating in a few doses and will correct over-acidity of the system.

Vendol * * * renews vigor in rundown systems.

* * * This splendid root and herb medicine.

Vendol, a Vegetable Stomachic.

Vendol Vegetable Laxative Tablets.

Rx.—Alcin, Senna Leaves, Poke Root, Licorice Root, Black Cohosh, Anise Seed, Gentian Root, May Apple, Yellow Dock, Queen's Root, Culver's Root, Dandelion.

The respondent hereby admits:

The therapeutic value of Vendol is that of a laxative, diuretic and mild antacid, and the product cannot be depended upon to produce the results to the extent represented in the foregoing claims;

Neither Vendol nor Vendol Laxative Tablets are exclusively of herbal, root or vegetable composition;

Respondent has published statements purporting to be the formula for Vendol, accompanied by the symbol "Rx" generally used by physicians on prescription blanks, when in fact such statements did not list all of the ingredients of the preparation, nor was the formula prescribed by a physician in his regular practice;

Sales were made after the expiration of time mentioned in respondent's offer.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vendol is a competent treatment or an effective remedy for stomach "trouble", stomach "disorders," constipation, sluggish liver, weak kidneys, unless confined to the relief of such conditions and when they may be due to conditions that can be benefited thereby;

(b) That Vendol will rid one of, end, or correct any physical ailment;

(c) That Vendol is a "balanced" formula;

(d) That by use of Vendol, any definite effect may be expected within any definite period of time, or that it will benefit any definite percentage of any definite number of persons;

(e) That Vendol "is a medicine which Nature herself might have compounded";

(f) That Vendol "works off" the liver;

(g) That Vendol is a competent treatment or an effective remedy for dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of stomach, lump in throat, nervousness, poor sleep, unless limited to such conditions when due to constipation;

(h) That Vendol is a competent treatment or an effective remedy for sore spots in the pit of stomach, or underweight;

(i) That Vendol "puts a stop to getting up all during the night";

(j) That Vendol flushes out the impurities of the "system";

(k) That Vendol will clear the "system" of constipation;

- (l) That Vendol will "build up run-down, nervous, bilious children";
 - (m) That Vendol is a "tonic";
 - (n) That use of Vendol will enable one to "sleep sound";
 - (o) That Vendol will "build up" or strengthen the system;
 - (p) That Vendol will renew strength or energy;
 - (q) That Vendol will "create a good appetite" or "aid the stomach in the process of digestion";
 - (r) That Vendol will "strengthen the stomach" or "calm the nerves";
 - (s) That Vendol will cause the bowels to move "regularly every day";
 - (t) That Vendol "has no equal" for stomach "troubles";
 - (u) That Vendol will "restore the system" or "renew vigor";
 - (v) That Vendol acts on the "organs";
 - (w) That one should "blame the stomach if you suffer from indigestion, dyspepsia, shortness of breath, heart flutterings caused by gastritis, cramps, acid risings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, bad breath, poor sleep";
 - (x) That either Vendol or Vendol Laxative Tablets is an "herb" "root", or "vegetable" preparation;
- and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from publishing any statement purporting to be the formula for any of respondent's preparations, unless such statement contains all of the ingredients of the preparation.

The respondent further stipulates and agrees to cease and desist from using the symbol "Rx", or otherwise indicating that the preparation was prescribed by a physician in the regular course of his practice.

The respondent further stipulates and agrees to cease and desist from representing that any offer is limited to a definite period unless the definite time is fixed, and all offers to purchase according to the terms of the offer are refused after the expiration of such time. (Nov. 4, 1936.)

01547. Vendor-Advertiser—Medicinal Preparations.—Gordon E. Jenks and Maynard E. Jenks, co-partners, doing business under the trade name of Jenks Brothers, Elkhart, Ind., vendor-advertisers, are engaged in selling two products designated Rectal Ointment and Lax-A-Ton Herb Tea, and in advertising represented:

SUCCESS FOR YOU, free trial, Treatment for Piles. No cutting.

You may feel the utmost confidence in this effective preparation because for more than 35 years we have found that the formula for this remarkable ointment has helped to relieve the agonizing misery, amounting at times to almost unbearable agony, of piles.

What makes Jenks Brothers combined treatment for piles all the more effective even in stubborn cases of long standing and severity is the fact that it consists of both an external and an internal treatment. The mere use of only a salve, oint-

ment, suppository, or liniment is not enough to bring best results, and insure lasting relief.

Has given gratifying results in * * * banishing the suffering, misery and agony of piles.

An internal remedy known as Jenks Brothers 'LAX-A-TON' Herb Tea. This is for use in conjunction with our rectal ointment to correct the chief cause of piles—which is constipation.

Use strictly according to directions. You should then experience real and lasting comfort, combined with health and happiness.

This letter saves you a dollar—and will start you on the way to quick and lasting relief from the eternal itching, burning, bleeding, and agonizing pain of piles.

Banish that pain, itching, burning! Stop that bleeding! Rid yourself of the needless, constant care and inconvenience of piles.

For your own sake avoid taking any chances of serious complications or an operation. Right now—this minute—is the time for action.

About eight months ago I suffered terribly from bleeding piles * * * I used less than one-half tube of your rectal ointment and took a few doses of your wonderful LAX-A-TON herb tea. The very first application brought soothing and comforting relief, and the bleeding stopped entirely after the fourth application. The herb tea corrected my constipation and there was no further aggravation or irritation from that cause. I can truthfully say that your combined treatment for piles relieved me of my trouble and I have not been bothered the least bit since.

I suffered a great deal with bleeding piles, and after using only one of your combined external and internal treatments for piles I was completely relieved.

Jenks Brothers LAX-A-TON Herb Tea * * * It is widely known and accepted as one of the best vegetable mild laxative, diuretic, and general all-around tonics obtainable.

Its mild and gentle action also flushes out and cleans the kidneys and removes the surplus bile from the liver.

The bowels are not forced by a quick action, but after being taken for two or three days the stool will be noticed to become gradually more loosened and regular, and to remain that way after the use of the tea has been discontinued.

Unlike some other herb laxative teas, LAX-A-TON does not force the bowels to a harsh quick action, and when their use is stopped, leave them in worse condition than ever.

In cases without number Jenks Brothers Combined Treatment has actually restored the sufferer to normal health and happiness again. The answer to this lies in the medicinal properties contained in the treatment.

This Herb Tea is a mild laxative, diuretic, and general all-around tonic; the ingredients of which are of the very highest quality, recommended by outstanding Herbal authorities and Botanists.

If you follow the directions carefully, we can conscientiously say to you that we feel entirely confident your PILE troubles will be greatly benefited and disappear.

The respondents hereby admit:

That, according to reliable medical authority, the therapeutic property of respondents' ointment is limited to the palliative relief of external piles, and the Lax-A-Ton Herb Tea is of value only as a laxative, carminative and mild diuretic; and neither of said products nor the combination thereof can be accepted as a competent remedy in the

treatment of any of the pathological conditions mentioned in the advertising.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Jenks Brothers Rectal Ointment is a competent remedy in the treatment of hemorrhoids or piles, or that it affords more than palliative relief of external piles;

(b) That the use of said ointment has resulted in "banishing" piles;

(c) That Jenks Brother Lax-A-Ton Herb Tea is a competent remedy in the treatment of constipation, or is any more effective than ordinary laxatives in relieving temporary constipation;

(d) That the use of Lax-A-Ton Herb Tea would bring lasting comfort, health and happiness;

(e) That Lax-A-Ton Herb Tea

1. Will "correct" constipation;
2. Removes the surplus bile from the liver;
3. Is a tonic or accepted as such;
4. Is recommended by herbal authorities or botanists;

(f) That Jenks Brothers Combination Treatment for piles

1. Will "banish" pain, itching or burning;
2. Stops bleeding of piles;
3. Affords prompt relief, or affords any relief from internal piles;
4. Has restored sufferers to normal health or happiness;
5. Is a success;

(g) That by the use of Jenks Brothers Combined Treatment for piles

1. One can "rid" himself of piles;
2. One may avoid serious complications or an operation;
3. The stool will become regular or remain that way after its use has been discontinued;
4. One's pile troubles will disappear;

and from making any other claims or assertions of like import. (Nov. 5, 1936.)

01548. Vendor-Advertiser—Medicinal Preparation.—Konjola, Inc., a corporation, East Port Chester, Conn., vendor-advertiser, is engaged in selling a medicinal preparation designated "Konjola" and in advertising represented:

KONJOLA for rheumatism, neuritis.

Users claim virtual health miracles for it in cases of rheumatism, neuritis and similar disorders.

* * * I don't know what a rheumatic pain is any more. Thanks to KON-

JOLA.

Quickly banishing stomach, digestive and skin troubles, restoring the natural vitality that * * * Have you any of these troubles * * * sallow skin;

indigestion; can't sleep; always tired; neuritis; stomach troubles; no "pep"; can't eat food you like; pimples or boils; nervousness; irritable or cross. Ask for KONJOLA.

* * * It banishes poisons that bring about stomach troubles. Relief comes quickly; great stimulant for sluggish liver.

Pains and stomach distress caused by "clinging poisons" now quickly relieved.

Remarkable New Medicine Discovery that works with our food, helps nature rid entire system of poisons.

Are you also compelled to give up pleasures because of indigestion? Do you suffer from heartburn, gasiness and intestinal pains? Are your nights sleepless? Do you get up in the morning feeling dizzy—with pains in your back and a splitting headache that makes you unfit for business or social activity? * * * Then do as thousands of others have done who suffered just as you do until they began taking KONJOLA.

* * * Can't gain weight. Maybe having headaches or some other symptoms of disordered digestive tract. Scientists say that the chances are you need KONJOLA.

* * * There's nothing better than KONJOLA for relieving stomach ailments and the "nervousness", pains and aches that are caused by intestinal troubles.

* * * In skin troubles, stomach disorders, "nerves", gas, indigestion, headaches, even the pains and aches that seem to come from the kidneys or liver. If you are suffering from any of these ailments—can't sleep, poor appetite, or if vitality is low, you owe it to yourself to try * * * KONJOLA.

Here is nature's remedy for stomach distress. Take a tablespoonful of KONJOLA after meals. Soon that stuffy, distressing, "aftermeals" feeling will leave you. * * * VIM, vigor and vitality will come back.

* * * to relieve stomach disorders, neuritis, rheumatic pains, nervousness and the troubles which result from these ailments.

It restores vitality.

* * * Chances are that stomach and intestinal disorders are dragging you down. They may show in skin troubles, stomach disorders, "nerves," gas, indigestion, headaches, even the pains and gas which seem to come from the kidneys and liver * * * try a famous medicine KONJOLA.

* * * Every man or woman who suffers from the tortures of neuritis and rheumatic pains owes it to himself or herself at least to try KONJOLA.

The respondent hereby admits:

That the therapeutic efficacy of Konjola is limited to its laxative, diuretic, hematinic, tonic and diaphoretic action, and as a digestive aid.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Konjola is a competent treatment or effective remedy for rheumatism or neuritis, indigestion or disorders of the digestive tract, unless limited to its palliative relief;

(b) That Konjola

1. "Banishes" stomach digestive, or skin troubles, "banishes" poisons that bring about stomach troubles;

2. Helps "rid" the system of poisons;
3. Relieves the nervousness, pains or aches that are caused by intestinal troubles;
4. "Restores" vitality;

(c) By direct statement or reasonable implication that Konjola is an effective remedy for treatment for—

1. Sleeplessness,
2. Fatigue,
3. Lack of energy or "pep,"
4. Irritability,
5. Dizziness,
6. Pains in back,
7. Headaches, unless due to constipation, or
8. Increasing weight, unless limited to such increase as may result from increased appetite and assimilation;

(d) That Konjola is a competent treatment or effective remedy for pimples, boils, sallow skin, heartburn, intestinal pains, or pains of the kidneys or liver;

(e) That Konjola is a new medicine "discovery";

(f) That Konjola will stimulate a sluggish liver;

(g) That Konjola is nature's remedy for stomach distress;

and from making any other claims or assertions of like import. (Nov. 4, 1936.)

01549. Vendor-Advertiser—Medicinal Preparation.—Omega Chemical Co., a corporation, Bush Terminal, Brooklyn, N. Y., vendor-advertiser, is engaged in selling a medicinal preparation for external application designated Omega Oil and in advertising represented:

Even the most deep-seated, stubborn pains end quickly and surely when OMEGA OIL is rubbed in.

It penetrates instantly to the pain spot.

OMEGA OIL will end pain in *your* legs—your back, your arms, neck or shoulders—faster, more safely and *more surely* than any other method you have ever known.

OMEGA OIL has acted in an emergency to *end* even the most deep-seated ache, pain or strain often after *many other* things had been used without success.

It is the fastest acting liniment known to medical science—three times more effective than ordinary liniments.

Its scientific formula makes it penetrate right to the pain spot.

OMEGA OIL penetrates to the pain spot. It relieves the cause of muscular pain.

OMEGA OIL is actually four times more effective than superficial heat liniments.

Good old OMEGA OIL gets right down to the pain spot and knocks every last bit of soreness and stiffness out of you.

OMEGA OIL has always taken out every bit of stiffness and pain within 24 hours.

OMEGA OIL will relieve even the most deep-seated ache—the most stubborn pain—quickly, surely and safely.

This famous liniment is three times faster, safer and surer than ordinary liniments.

OMEGA OIL penetrates quickly and safely to the deepest pain spot.

OMEGA OIL is four times better than ordinary liniments.

And you have the satisfaction of knowing that OMEGA has not only stopped the pain—but helped to correct the congestion that caused it.

The medical profession is agreed that the formula of OMEGA OIL makes it absolutely outstanding.

Learn how to end aches, pains, strains and soreness.

Even the most deep-seated rheumatic and muscular aches, pains and strains are relieved quickly and safely.

End pains and aches this quick way.

Go right to the seat of the trouble with OMEGA OIL!

Pain—end it this way.

Ends pain quick.

Break that cold in throat, chest or head.

Break up your cold the quickest, safest way—with powerful OMEGA OIL.

And even today there is still nothing half as good as OMEGA OIL.

No other liniment is half as fast—or safe—or sure—for aiding rheumatic and deep-seated muscular aches and pains as OMEGA OIL.

The one best way to end aches, pains, strains, and sore, stiff muscles.

The respondent hereby admits:

The fact that certain ingredients of Omega Oil, namely, Methyl Salicylate and other medicinal ingredients in an oily base, when properly applied will penetrate the skin and exercise therapeutic effect upon underlying tissues, does not of itself mean that finality of relief will result or prevent return of symptoms; nor does any such remedial agency have that quality of selection that would cause it, once introduced, to search and find a particular locality of pain or other distress for its exclusive performance;

That the medically known fact that certain drugs when applied to a local skin area will penetrate the skin and have therapeutic effect upon organs affiliated with that skin area but remote therefrom, does not allow of claim that Omega Oil through its penetrative and therapeutic qualities will in all instances have relieving effect upon the most stubborn deep-seated pain;

That although Omega Oil will produce quicker relief than some other preparations that do not contain drugs capable of producing a medicinal effect upon the nerve endings, it is not the only preparation containing drugs which act in that manner.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Omega Oil will "end" or "stop" aches, pains or other symptoms or use similar words that would convey idea of permanent finality of result as against recurrence:

(b) That Omega Oil is unique in its composition and effects by use of expressions such as "no other way", "the one best way", or other words conveying impression that the preparation is absolutely exclusive in its possession of certain relief or healing virtues; or that the medical profession "is agreed" that the formula for Omega Oil makes it outstanding, or any wording that would carry the impression that the profession as a whole is so agreed;

(c) That Omega Oil relieves "deep-seated" or stubborn pain unless such representations are qualified to exclude those pains which cannot be benefited by its therapeutic action and unless such representations are so worded that they will not imply that Omega Oil will have therapeutic effect upon the underlying causes in every instance;

(d) That Omega Oil is actually "four times" more effective than ordinary surface liniments; or that it is "three times" better than any liniment you ever used; or that no other liniment is "half as fast or safe or sure"; or that even today there is still nothing "half as good" as Omega Oil;

(e) By the use of such expressions as "penetrates to the pain spot" and "go right to the seat of the trouble", that the action of Omega Oil is selective or specific as distinguished from its absorption at the area of application;

(f) That Omega Oil will afford complete relief within any definite period of time;

(g) That Omega Oil is a more competent treatment than other preparations of similarly effective ingrediency in the treatment of colds, or that it is quicker and safer in affording palliative relief from the ordinary pain and discomfort of colds, than are such other preparations;

(h) That the action of Omega Oil is sure;

and from making any other claims or assertions of like import. (Nov. 4, 1936.)

01550. Vendor-Advertiser—Medicinal Preparations.—H. P. Clearwater, Ph. D., an individual, Hallowell, Me., vendor-advertiser, is engaged in selling two medicinal preparations for the treatment of rheumatism, constituting what is designated "Clearwater's Treatment" and in advertising represented:

FORGET ABOUT URIC ACID! It Does Not Cause Rheumatism and right here I am going to ask you to please forget, and put out of your mind entirely, if you will, all that you have ever heard, or read, or been led to believe about Uric Acid causing Rheumatism, because I make the positive, unqualified statement, that my investigations prove to me conclusively that Uric Acid IS NOT the cause of rheumatism.

In other words, Rheumatism—as it is commonly accepted and understood, and the painful conditions accompanying it, and which, it seems to me, should more properly be called Toxicosis—is, in my opinion, unquestionably due to Toxaemia. That is: a direct poisoning of the system through the bloodstream, by absorption of these poisonous Toxins, chemically developed in the intestines by the putrefaction of certain undigested food elements, set free in the proteid metabolism. The development, intensity, and continuation of the Toxaemia, or Rheumatism, depending mainly upon the rapidity of the absorption of the poisons, and the natural power of the system to resist or overcome their effect.

Uric Acid Never Caused Rheumatism—Free Book Tells Why If you want to really get rid of your Rheumatism—Neuritis—Arthritis—Sciatica—Lumbago—you must first get rid of the old and false belief that Uric Acid causes them.

ENDED HIS RHEUMATISM.

The respondent hereby admits:

That, according to the consensus of medical opinion, the absorption of undigested food elements in the intestines is not the only cause of rheumatism;

That while such preparations will relieve rheumatic symptoms they will not rid one of or end rheumatism in the sense of preventing further attacks of rheumatism due to the same or other causes.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Rheumatism is caused only by the absorption of poisonous toxins, chemically developed in the intestines by putrefaction of certain undigested food elements;

(b) That uric acid never caused, or does not cause rheumatism;

(c) That by the use of this treatment one may end rheumatism or get rid of rheumatism, neuritis, or arthritis, sciatica or lumbago in the sense of preventing further attacks due to the same or other causes;

and from making any other claims or assertions of like import. (Nov. 4, 1936.)

01551. Vendor-Advertiser—Correspondence Course.—R. E. Stults, an individual, doing business as The United Detective System, Chicago, Ill., vendor-advertiser, is engaged in selling a detective training course and in advertising represented:

Be a detective. Make Secret Investigations. Experience unnecessary.

The demand for trained detectives is rapidly increasing and this training actually prepares you for a paying and permanent position.

Private Detectives earn big money and this course tells you how to operate this business, right in your own home, no matter where you live.

There are thousands of positions open each year and I will help you to get in touch with these positions in every way possible.

I will give you the necessary training that will meet with all the requirements of a Successful Detective.

An "Engraved Diploma" will be given to you after the satisfactory completion of this course. This Diploma is signed with the Gold Seal of The United Detective System, which will be very attractive to hang in your office or room. When you receive this Diploma, you need not hesitate in applying for a good Detective Position. This Diploma shows you are a Graduate Detective and you are well qualified to handle practically all kinds of Detective and Investigation Work.

After you complete this course you will receive a Credential Card, bearing your name and number, showing you are a Member of The United Detective System.

Free Finger Print Instruction Book! When you complete your course with The United Detective System you will receive Free Finger Print Instruction Book.

Send in your enrollment *To-day*, and become a *Successful Detective Yourself*.

Here is a field so broad, so crowded with opportunities, that you are bound to succeed whether you choose to work for others or go into business for yourself, after completing our special course of training.

When you finish the course you will be well qualified to handle practically any detective job, and as soon as your ability is recognized you will be able to command a salary far greater than you have ever earned before.

Crime is on the increase, and trained detectives are needed now as never before.

You will find your services eagerly sought by business men of all kinds, department stores, detective agencies, insurance companies, banks, railway and steamship lines, local, federal and foreign governments, manufacturers and etc.

If you send your enrollment by return mail—we will tell you how to make extra money during your spare time, WHILE LEARNING, by acting as our "SPECIAL REPRESENTATIVE" in your locality.

United Detective System.

We have graduates in every state in the United States and many foreign countries.

The respondent hereby admits that:

1. Experience is necessary in order to become a detective.
2. The training obtained through this course does not of itself prepare a person for a good paying and permanent position; nor does it give one the necessary training that will meet all the requirements of a successful detective.
3. Not every person with the qualifications specified in the foregoing advertisements is sure to succeed by following respondent's course of instruction.
4. The diploma given after the completion of the course offered does not show more than that a person is a graduate of respondent's training school, and does not show that a person is well qualified to handle practically all kinds of detective and investigation work.
5. The demand for detectives is not greater now than in the past, nor are the services of graduates of respondent's course eagerly sought by employers.
6. The methods and principles used in his course of training are not practically the same as practiced by expert detectives.
7. It is not necessary to send one's enrollment "by return mail" in order to act as "Special Representative" of his school.
8. There are not graduates of his school in every state in the United States and many foreign countries.

9. A finger print instruction book is not given free upon the completion of the course, but is included in the price of the course.

10. By completing his course does not make anyone a member of any detective system, and that his course of training or school is not connected with any detective system.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

a. Experience is unnecessary in order to be a detective;
 b. That crime is on the increase and trained detectives are needed now as never before;

c. That the training obtained through his course will of itself:

- (1) Actually prepare a person for a good paying and permanent position;
- (2) Enable one to operate a detective business in his own home, no matter where he lives;
- (3) Give one the necessary training that will meet all the requirements of a successful detective;

d. That after completing his course of training, a person is bound to succeed, or will find his services eagerly sought;

e. That there are thousands of detective positions open each year;

f. That the diploma given at the completion of his course of training shows more than that one is a graduate of respondent's school;

g. That it is necessary to send one's enrollment "by return mail" in order to act as "Special Representative" of his school;

h. That a finger print instruction book, or anything else is given free when the price thereof is included in the price charged for the course;

i. That the completion of his course makes anyone a member of any detective system, or that his course of training or school is connected with any detective system;

j. That there are graduates of his school in every state in the United States and many foreign countries, unless and until reliable records show such to be a fact;

k. That the methods and principles used in this course of training are practically the same as practiced by expert detectives, or that the instruction given is anything more than a correspondence training course;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from the use of the trade name "The United Detective System," unless in direct connection therewith there appears a statement ex-

plaining that it is only a training school for detectives. (Nov. 4, 1936.)

01552. **Vendor-Advertiser—Medicinal Preparation.**—H. R. Walde, an individual, Lake Wales, Fla., vendor-advertiser, is engaged in selling Walde's Wonder Salve and in advertising represented:

RESULTS ARE REMARKABLE. It is more than a first aid * * *

For—Infections, Boils, Burns, Old Sores, Fresh Cuts, Bruises, Sprains, Ulcers, Felons, and Sore Eyes.

Protection against infection * * * from cuts or rusty nails.

You can't afford to waste time with ineffectual preparations when some boil, old sore or similar skin eruption angrily threatens to reach the stage of blood poisoning. Walde's Wonder Salve sells itself through its own merits.

Do you realize what sorrow and pain can be prevented with a little thought on your part? If you should get a severe cut or burn, what would you do? Let me offer you Walde's Wonder Salve.

What are you doing about the old sore? Have you stopped trying because you think you have used everything? Why don't you try Walde's Wonder Salve?

For all kinds of sores, infections, fresh cuts, old sores, felons, inflamed eyes, boils, burns, bruises, sprains, ulcers, wounds, sore eyes.

The respondent hereby admits:

That according to reliable medical authority this product cannot be properly considered even as a first-aid for the conditions for which it is recommended as an effective remedy or treatment.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of, and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Walde's Wonder Salve is an effective treatment for all kinds of infections, boils, burns, wounds, sores, fresh cuts, ulcers, felons, bruises, sprains and sore eyes, or a remarkable remedy or first aid in such conditions;

(b) That Walde's Wonder Salve is a protection against infection of any kind, particularly wounds from rusty nails;

(c) That Walde's Wonder Salve is an effective treatment for boils, old sores or similar skin eruption, that threaten to reach the stage of blood poisoning;

(d) That Walde's Wonder Salve is an effective treatment for old sores in cases where all other remedies have failed;

and from making any other claims or assertions of like import. (Nov. 9, 1936.)

01553. **Vendor-Advertiser—Book.**—Jim Lund, an individual, River Falls, Wisc., vendor-advertiser, is engaged in selling a book designated "1,000 Ways to Get Rich" and in advertising represented:

1,000 Ways of Getting Rich! Most unique opportunity! Make money home, everywhere! Particulars for stamp. Jim Lund, River Falls, Wis.

\$50,000 Made From a Single Formula! If this were written on a Hundred Dollar Bill it would not be more valuable.

Here is truly, the greatest opportunity of your life! The exclusive book of selected and rare money making secrets.

Announcing The "Book of Knowledge" containing One Thousand Formulas, Plans and Secrets how to make money in your spare time at your own home. You can start with as little as one dollar, and quickly expand your business in a very short time—gain comfort, independence and happiness for the rest of your life!

How would you like to earn \$50,000 in a business of your own? I know one man in New York City who made \$50,000 from a single formula contained in this wonderful book!

A small ad in a few magazines will bring you a host of willing salesmen eager to sell your merchandise, paying you Big Profits!

The "Book of Knowledge" contains One Thousand Ways to the Road of Success.

Any single formula contained in this RARE Book is worth a fortune.

A few years ago the author paid \$300.00 for one recipe which you will find in this book.

The Average Formula is easily manufactured at a cost of 5c per box or bottle, and retails for 25c. An article which retails for \$1.00 costs you about 15c to make up.

Here is an opportunity worth its weight in gold to you.

In this section I am offering TEN of the greatest Scientific Money-Making Discoveries ever brought to you! Any one of them is sufficient to bring you financial independence and security.

YOU MAKE \$1.98 PROFIT ON EVERY \$2.00 SALE on this one.

This is a profitable, tested and tried seller which will bring you a minimum profit of at least \$15 daily.

Mail Order Instructions written to be sold for \$5.00 given as a FREE premium to our clients.

20 WAYS TO MAKE A MILLION.

The respondent hereby admits:

That the booklet advertised and sold by respondent, entitled "1,000 Ways to Get Rich", is of little practical value to the purchaser or reader;

That no such sums of money, as represented in the advertising claims of respondent, have ever been earned by any person purchasing and reading the booklet "1,000 Ways to Get Rich."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "1,000 Ways to Get Rich"

1. Is a most unique opportunity;
2. Enables one to make money at home, everywhere;
3. Is "truly the greatest opportunity of your life";
4. Tells one how to start at home, with as little as one dollar, and in a short time gain comfort, independence and happiness;

6. Contains 1,000 formulas, plans and secrets for making money in spare time at home;
7. Contains 1,000 ways to the Road of Success;
8. Offers an opportunity worth its weight in gold; or
9. Gives "20 ways to make a million";

(b) That \$50,000.00 has been made from a single formula contained in this booklet;

(c) That a single ad in a few magazines will bring a host of willing salesmen eager to sell one's merchandise;

(d) That any single formula contained in this rare book is worth a fortune;

(e) That the author paid \$300.00 for one recipe contained in this book;

(f) That a product manufactured, from a formula contained in this booklet, at a cost of 5 cents easily retails for 25 cents, or that a product retailing for \$1 costs only 15 cents to manufacture;

(g) That any one of the ten "greatest scientific money-making discoveries ever brought to you" is sufficient to bring financial independence and security:

(h) That you make \$1.98 profit on every \$2.00 sale;

(i) That one can earn a minimum profit of \$15 a day from one of the formulas contained in this booklet;

(j) That Mail Order Instructions of the value of \$5.00 are given free with the purchase of this booklet;

and from making any other claims or assertions of like import. (Nov. 9, 1936.)

01554. **Vendor-Advertiser—Syrups.**—American Maize Products Co., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling Amaizo Golden Syrup, Amaizo Crystal White Syrup, and Jak'n Jil Syrup, and in advertising represented:

Amaizo Golden Syrup * * * is extra rich in Dextrose * * *. The mysterious element that supplies the body with quick energy * * *. Replaces burned-up body tissues, revives tired muscles, nourishes starved nerves. You will find it in many foods * * * and extra plentiful in Amaizo Golden Syrup.

* * * Amaizo Syrup is a wonderful milk modifier for infant feeding. Mixed with cow's milk or unsweetened evaporated milk, it is the best substitute for mother's milk.

* * * Amaizo Syrup is extra rich in Dextrose.

* * * Recommended by the American Medical Association—JAK'N JIL SYRUP—.

The respondent hereby admits:

That the composition and functions of dextrose in the body's metabolism have been known for a number of years, and are not mysterious;

That respondent's syrups do not contain dextrose in amounts sufficient to warrant respondent in representing that its syrups are "extra rich" or "extra plentiful" in dextrose;

That dextrose does not contain all the substances necessary to build body tissues and nerves, and fatigued muscle tissue cannot be restored by food alone, it must also be rested;

Respondent's syrups have been accepted but not recommended by the American Medical Association.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That dextrose is a "mysterious" element;

(b) That dextrose—

1. "Replaces burned-up body tissues";
2. "Revives tired muscles";
3. "Nourishes starved nerves";

(c) That any of the respondent's syrups is "the best" substitute for mother's milk;

(d) That any of respondent's syrups is "extra rich" or "extra plentiful" in dextrose;

(e) That any of respondent's syrups has been "recommended", as distinguished from accepted, by the American Medical Association; and from making any other claims or assertions of like import. (Nov. 10, 1936.)

01555. Vendor-Advertiser—Medicinal Preparation.—Germaine Bernard and C. T. Council, co-partners trading as B. C. Remedy Co., Durham, N. C., vendor-advertisers, are engaged in selling a certain medicinal preparation designated B. C. or B. C. Remedy, and in advertising represented:

Say goodbye to annoying headaches. Join the thousands who get quicker relief with B C headache powder.

To get quicker relief from headaches, neuralgia and muscular aches use B C. Vote for quicker relief by using B C headache powder, the remedy thousands have adopted in the fight against torturing headaches.

The nationally-accepted remedy is B C headache powder.

Headaches may arise from many causes, B C contains several ingredients thus increasing its chances of bringing relief.

Give B C a trial the next time you are aching all over and want quicker relief.

The quick-acting ingredients of the B C formula are designated to function where action is needed.

There's absolutely no reason nowadays why people should suffer for hour after hour.

B C is a scientific preparation so conceived and compounded that it functions quickly at the source of the trouble.

Feel free to use B C as often as required to banish pain.

If you suffer with headaches or with neuralgia from time to time, why not try B C and see if it won't help you to banish nerve racking aches and pains in short order.

It really does relieve quicker. Millions of people know this. That's why it ranks first in the Nation.

B C banishes the ache or pain in a remarkably short space of time. Usually it's just a matter of three or four minutes.

Be prepared to banish aches and pains before they drive you into a state of distraction.

Remember this and the next time a headache grips the system get rid of it in short order.

Use B C when you want to banish inorganic aches and pains.

It contains not just one, but several quick-acting ingredients. All of them strike at a headache simultaneously, bringing prompt and comforting relief.

Headaches, neuralgia, simple head colds and muscular aches vanish within a few minutes after you take B C.

The special combination of ingredients and skillful blending accounts for the exceptional and amazing relief-giving action of B C.

The B C formula is based on a physician's prescription and every package is put up with the care of a registered pharmacist.

Hundreds of people who are bothered quite frequently with stubborn head colds say that B C is a remarkably fine remedy to use to get quick and effective relief.

One of the best ways to stop a nerve racking headache is to calm the nerves and relieve the tension—and that's exactly what you accomplish when you use B C.

B C soothes the nerves and by so doing allows natural restoration to begin more readily.

A most effective remedy for use in combating simple head colds.

Quickly it does relieve stubborn aches and pains.

Headaches Relieved Quicker.

No one drug can relieve all headaches, as they come from so many causes. But when you have a violent, nerve-racking headache you want quick relief.

You get quick-relief "The B C Way", because the B C formula contains several quick-acting, widely prescribed ingredients, combined to allay almost any headache.

So use B C for quicker relief from headaches, neuralgia, muscular aches, simple head cold pains, reducing fever and quieting distressed nervous system.

Women who use B C at the trying time of the month "for headache and back-ache" due to inorganic causes, find that it gives quicker relief.

B C is also effective for the relief of simple head colds, muscular aches and pains; acts as a sedative and tends to reduce fever.

Respondents hereby admit:

That B C is merely a preparation for headaches, pains and discomforts, and as such can do no more than temporarily treat the symptoms of some ailments; and its effect upon colds is limited to relief of the discomforts thereof;

That said preparation will not give "quicker" relief; and will not function at the source of the trouble or give action "where action is needed";

That said preparation can be taken too freely for safety;

That said preparation will not be effective in three or four minutes;

and when taken according to directions, will not reduce fever;

That no evidence has been offered to support the assertion that "B C" ranks first in the nation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise;

(a) That by the use of B C Remedy one may "banish" headaches, or muscular aches or cause them to "vanish";

(b) That B C will give "quicker" relief;

(c) That the "nationally-accepted" remedy is B C headache powder or that the blue and white package of B C is the "nationally-recognized" sign for relief from aches and pains;

(d) That the quick-acting ingredients of the B C formula are designed to function or give action "where action is needed", or at the source of the trouble;

(e) That B C may be used "as often as required" to banish pain;

(f) That B C ranks first in the Nation, unless and until reliable statistics show such to be the case;

(g) That B C relieves pain within three or four minutes or within any other definite period of time;

(h) That B C is a most effective remedy for use in combating either stubborn or simple head colds;

(i) That B C is the remedy thousands have adopted in the fight against torturing headaches;

(j) That B C is "skillfully" blended or is "exceptional" in its relief-giving action;

(k) That by the use of B C one may stop a headache or say good-bye to aches or pains;

(l) That B C relieves stubborn aches and pains or will allay almost any headache or tends to reduce fever;

and from making any other claims or assertions of like import. (Nov. 10, 1936.)

01556. **Vendor-Advertiser—Clothing.**—Elmer J. Jacobs, doing business under the trade name of Peter Falor Co., Kansas City, Mo., vendor-advertiser, is engaged in selling clothing and in advertising represented:

500 Sweater Coats Free. P. Falor Co., Dept. 24, Kansas City, Mo., is offering a sweater FREE for advertising purposes. If you want one, write them. Nothing to buy. Agents Wanted.

500 Sweater Coats Free. Peter Falor Co., Dept. 5, Kansas City, Mo., offers a sweater Free to one person in each locality. If you want one write them today. Nothing to buy.

500 Sweater Coats Free! Kansas City, Mo.—For the next ten days the Peter Falor Co., Dept. 50, Kansas City, Mo., offers to give a handsome sweater coat

FREE to one man or woman in each block or locality. To get this coat you do not have to buy or sell anything. If you want one, write them today, telling them you saw the announcement in Townsend Weekly.

If you have trouble getting him measured say quietly, "This offer is not open to everyone—after a'll it is a special advertising opportunity that you do not get every day. I can't tell till I get your measurements if I am permitted to take another order from a person your size in this neighborhood."

As this is strictly an advertising offer I believe you will agree it wouldn't be fair to ask the company to keep it open indefinitely, would it? It is enough that they are giving certain people in certain localities ONE chance to get such a suit at these prices. When I am notified that my quota for this district has been completed I must quit taking orders. In that way we get general advertising. However I can take your reservation now and have your suit shipped whenever it is most convenient for you to receive it. About what date Mr.— do you think you would like to receive it?

Here is a special 10-day offer.

The respondent hereby admits:

That the sweater coats advertised are not "free", inasmuch as a purchase of merchandise must first be made to procure same, and a C. O. D. payment for such merchandise must be made before delivery of the sweater;

That said sweater coats are not limited to one man or woman in each locality, but are given to anyone and everyone purchasing a rain coat regardless of locality;

That the sale of a suit or rain coat is not limited to one person in each neighborhood, as represented;

That this is not a special 10-day offer.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That 500 sweater coats, or any sweater coats are given free for advertising purposes to any one writing for same;

(b) That any person writing for a free sweater coat will receive same without being required to purchase anything;

(c) That a free sweater is given to only one person in each locality;

(d) That a sales person for respondent's products is permitted to take only one order or make only one measurement in the same block or neighborhood for customers of similar size;

(e) That sales persons for respondent's products are limited as to the number of sales they make in any community or neighborhood;

(f) That any offer regularly made by respondent is a special offer;

(g) That any offer is for a ten-day or any other specified time unless the offer is withdrawn at the expiration of such time;

and from making any other claims or assertions of like import. (Nov. 5, 1936.)

01557. **Vendor-Advertiser — Medicinal Preparation.**— Associated Pharmacists of Baltimore, Inc., a corporation, Baltimore, Md., vendor-advertiser, is engaged in selling a medicinal preparation designated Q-623, and in advertising represented:

The famous Q-623—quick relief for rheumatism, neuritis, sciatica, lumbago—now is available to all sufferers from these tortures. Q-623 is a prescription of a famous specialist that has worked wonders for thousands of people when many other remedies have failed * * * A few doses usually stops the pain.

Q SIX TWO THREE * * * will not upset the stomach * * * does not contain anything harmful and it absolutely is safe for anyone to take.

Q-6-2-3 * * * Does not * * * affect the heart. Try this remedy. It is guaranteed to help you.

The respondent hereby admits:

While the product may be of some benefit in relieving the pains resulting from the conditions for which it is represented, the product cannot be depended upon to produce results to the extent represented in the foregoing advertisements;

The product is not the prescription of a famous specialist;

Respondent's "guarantee" is limited to an offer to refund the purchase price in case results are not satisfactory;

The product contains ingredients which may upset the stomach;

No pharmacists are financially connected with the corporation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is a competent treatment or an effective remedy for rheumatism, neuritis, sciatica, or lumbago, unless limited to the relief of pain resulting from such conditions;

(b) That the product is "a prescription of a famous specialist";

(c) That the product "will not upset the stomach";

(d) That the product "does not contain anything harmful";

(e) That the product "absolutely is safe for anyone to take";

(f) That the product is "guaranteed";

and from making any other claims or assertions of like import. (Nov. 12, 1936.)

01558. **Vendor-Advertiser—Obesity Treatment.**—Manikin Products, Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a certain beverage advertised as a treatment for obesity and designated "Manikin Tea" and in advertising represented:

Don't envy the sylphlike figure of a fashion manikin; drink MANIKIN TEA and have one yourself;

MANIKIN TEA for a fashionable figure (with a picture of a slender woman);

Men are consistent users—to obtain a youthful, athletic figure;

Does not lower the body vitality;

Assists in ridding body of fat tissues it, at the same time, helps to firm up the entire system;

Aids in establishing the proper circulation of the blood;

In drinking MANIKIN TEA simply throw away your calory list and live a normal, healthy life;

Is 100% pure and harmless;

A good, safe beverage.

* * * reduction of excess flesh should be gradual, natural, and pleasant.

The laxative qualities of Manikin Tea are such that the intestinal tract is thoroughly cleansed. In the opinion of medical authorities who have studied the subject, proper elimination is essential in order that the body may have Chemical Balance. When the body possesses chemical balance, the possibility of overweight is brought down to a minimum.

The use of Manikin Tea by overweight men and women does not require any specific diet * * *

The respondent hereby admits:

That a preparation of such composition would have laxative and diuretic properties but in and of itself would have no appreciable effect in reducing weight or producing a fashionable figure;

That any preparation containing senna and/or bladder-wrack is, according to the consensus of medical opinion, if taken in sufficient quantity over a period of time, capable of producing harmful effects;

According to reliable medical opinion, such a preparation would not promote "Chemical Balance" in the body;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Manikin Tea

1. Will enable one to have the sylphlike figure of a fashion manikin,
2. Will produce a fashionable figure,
3. Will produce a youthful, athletic figure;

(b) That Manikin Tea assists in "ridding" the body of fat tissues or that it helps to firm up the entire system;

(c) That this product aids in establishing the proper circulation of the blood;

(d) That in drinking Manikin Tea one can "simply throw away" his "calory list and live a normal, healthy life," or that it is not necessary to follow a diet;

(e) That the use of Manikin Tea does not lower the body vitality;

(f) That Manikin Tea is

1. "Pure and harmless,"
2. "Safe";

(g) That this product will promote "Chemical Balance";

(h) Generally that Manikin Tea is a competent treatment or effective remedy for obesity;

and from making any other claims or assertions of like import. (Nov. 16, 1936.)

01559. Vendor-Advertiser—Medicinal Preparation.—Dr. A. F. Jacobson and Arthur Carlsten, copartners, doing business as D'Arten Pharmacal Co., Chicago, Ill., vendor-advertisers, are engaged in selling a preparation designated D'R 10 Cream Liniment, and in advertising represented:

RELIEF FOR ALL RHEUMATISM AND ARTHRITIS SUFFERERS.
We want a thousand sufferers to prove the wonderful-almost instant-relief that D'R 10 CREAM LINIMENT—the new scientific compound of penetrating oils—will give them from muscular or joint pain. Nothing like it ever offered before—just rub it on and the pain goes.

D'R 10 CREAM LINIMENT—THE MODERN RELIEF from the ACHES—PAINS and SORENESS of RHEUMATISM AND ARTHRITIS or Sprains and Strains.

To successfully overcome the aches and pains requires local treatment while internal medication, under the guidance of a physician, is attacking the cause of the trouble.

Unless the treatment is combined, the causes that produced inflammation may be removed yet the pain and ache will continue. Therefore the local treatment with the proper application is most important.

Many of these (liniments) were good as far as they went, but they failed of complete satisfaction because they lacked two definite essentials—

1. Continued contact of the remedial agent
2. Penetrative medication to overcome the inflammation and so eliminate the pain and soreness.

These are the reasons for the development and production of D'R 10 CREAM LINIMENT.

Recognizing the great need of an adequate and effective local treatment for these torturing aches and pains—a treatment that would give prompt relief from suffering would so reduce the inflammation that healing would be natural, the doctors and chemists of D'Arten Pharmacal Co. cooperated in a long period of tests and experiments and have developed a product that is without an equal for these purposes.

First, they sought oils that would readily penetrate the skin to the tissues beneath;—oil that would give relief to tortured bodies without the use of narcotic drugs. Month after month they worked—trying—discarding—accepting, until they had assembled a group of products that gave them the results they sought.

Then finally they had just the combination—a perfect blend of healing,—a blend that quickly allays aches, pains and soreness.

After this was developed, it was proven by our physicians in their practices—over and over—and, every time the results were the same—quick relief—lasting relief—and banished soreness and lameness.

It made no difference whether the pain came from arthritis, rheumatism of long standing—or from a minor strain—this marvellous blend never failed.

Such are the reasons for claiming unusual results in relieving pain and soreness for D'R 10 CREAM LINIMENT—.

The respondents hereby admit:

That according to reliable medical authority a compound such as this cannot be accepted as affording an effective relief from aches, pains or soreness of arthritis or rheumatism; the ingredients in said preparation are not a new scientific or modern remedy for any trouble; and its value for sprains and strains or other pains or soreness is limited;

That no proof has been offered of a long period of tests and experiments in developing this product; or that physicians have proven the same results every time, namely, lasting relief and banishment of soreness and lameness.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That D'R 10 Cream Liniment affords an effective relief from the aches, pains and soreness of rheumatism or arthritis;

(b) That D'R 10 Cream Liniment is a "new scientific" compound of "penetrating oils";

(c) That nothing like D'R 10 Cream Liniment was ever offered before or that it has no equal;

(d) That by just rubbing D'R 10 Cream Liniment on, the pain "goes";

(e) That D'R 10 Cream Liniment is the "modern relief" from the aches, pains or soreness of rheumatism or arthritis; or from strains or sprains; or from any other condition;

(f) That D'R 10 Cream Liniment is an adequate or effective local treatment for aches or pains due to inflammation, or generally, that local treatment is required to overcome inflammation; or that aches and pains continue after other underlying causes have been removed;

(g) That the oils in D'R 10 Cream Liniment "penetrate the skin to the tissues";

(h) That D'R 10 Cream Liniment is a perfect blend of healing oils or medicants; or that it quickly allays conditions other than minor aches and pains;

(i) That the therapeutic properties of D'R 10 Cream Liniment include two or any other definite essentials not present in other preparations for similar purposes;

(j) That D'R 10 Cream Liniment "never failed" in affording relief from arthritis, rheumatism minor strain, or other conditions;

(k) That D'R 10 Liniment "banished" soreness or lameness; that it was developed through a long period of tests or experiments; that the results were the same every time; that it gave "lasting" relief; or that physicians have proven such claims to be so;

and from making any other claims or assertions of like import. (Nov. 16, 1936.)

01560. **Vendor-Advertiser—Washing Fluid.**—Clorox Chemical Co., a corporation, Oakland, Calif., vendor-advertiser, is engaged in selling a washing fluid designated Clorox, and in advertising represented:

Clorox protects—it disinfects—bleaches—removes stains—destroys odors—kills germs.

Clorox has established a higher standard of household hygiene in millions of homes because of its positive germ-killing power.

As I work I kill germs.

I bleach, remove stains, destroy odors and kill germs all in one operation.

I kill germs and “police the danger zones” in laundry, kitchen, bathroom.

I work like magic in laundry, kitchen, and bathroom—bleaching, removing stains, destroying odors, and killing germs.

Clorox kills typhoid, diphtheria, scarlet fever and many other infectious germs in less than ten seconds.

Remember, as Clorox works, it kills germs.

As I cleanse I kill germs.

As Clorox cleanses and deodorizes it kills germs.

The respondent hereby admits that according to the apparent consensus of present day scientific opinion:

The term “kills germs”, connotes the killing of their spores as well as the germs, whereas Clorox cannot be relied upon to kill the more resistant spores;

The terms “germicide” and “disinfectant” do not connote the killing of the spores as well as the germs;

The term “destroys odors” connotes the destruction of odors in the air as well as the destruction of odors when applied to the source of the odor or to the surface from which the odor emanates, but it is not generally practical to use Clorox to kill odors in the air;

The term “deodorant” does not connote the destruction of odors in the air;

The term “removes stains” connotes the removal of all types and kinds of stains whereas Clorox will not remove some stains.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Colorox

1. “Kills germs.”
2. Removes stains unless specifically limited to most stains or certain indicated stains or words of similar limiting import.
3. Destroys odors unless the representation is limited to destruction of odors by application at the source of the odor or upon the object from which the odor emanates.

(b) That Clorox kills typhoid, diphtheria, scarlet fever and many other infectious germs "in less than ten seconds"; and from making any other claims or assertions of like import. (Nov. 17, 1936.)

01561. Vendor-Advertiser—Fruit Spray.—The Kalo Co., a corporation, Quincy, Ill., vendor-advertiser, is engaged in selling a product designated Kalo Spray, and in advertising represented:

The best way to get lead off is not to put too much on. Five covers are many times harder to clean than three and Washington growers have already paid a big bill in damaged or rewashed fruit because of a heavy lead load. Fruit with lead early and KALO late only has to meet 0.028 grains per pound (the total of both, the lead and fluorine tolerances), and surely 0.028 is easier to meet than 0.018.

The Experiment Station of Washington State College and the U. S. Station at Yakima have proved the efficiency of Kalo in worm control, and the removal experiments of U. S. Bureau Plant Industry showed the removal of two or three sprays, even when applied late.

Washington growers have used about 1,000,000 pounds of KALO.

The efficiency of KALO SPRAY, (which embodies the cryolite especially prepared for insecticide purposes), is fully proven by extensive official tests by Federal and State entomologists, and by three years of satisfactory use by hundreds of growers.

We believe that most results will show an average increase in sound fruit (free from worms and stings) of 3 to 10% over lead arsenate, with better color, and more freedom from spotting.

If you do not intend to wash your fruit, a substitute for lead arsenate should be used. The two most economical substitutes are cryolite and calcium arsenate. Cryolite (KALO) at the rate of 4 pounds plus 1 pint of fish oil or 1 quart of summer oil emulsion per 100 gallons of spray has given good control.

Take advantage of the total combine tolerance of 0.028 grains per pound. Grow and spray for interstate shipment. Don't limit yourself to your local market. Be able to sell wherever prices are high.

USE KALO THIS YEAR—REDUCE YOUR LEAD LOAD—USE THE TOTAL TOLERANCE PERMITTED IN LEAD PLUS FLUORINE, 0.028 grains per lb.

The official approval for control by the State College of Washington and the U. S. Department of Agriculture Bureau of Entomology at Yakima, as well as hundreds of tons by Washington growers would appear to guarantee your control with KALO.

The respondent hereby admits:

That the sum of the spray residue tolerances allowed by the Department of Agriculture for lead and fluorine is not a total tolerance allowed without regard to the maximum permitted for each:

That in certain scientific experiments referred to in the foregoing advertisements, the respondent's product Kalo Spray was not actually used, and the experiments mentioned were made under arid conditions and did not include other climatic conditions common to the territory in which Kalo Spray is sold;

That the one million pounds of Kalo Spray represented as having been used by the growers in the State of Washington were actually

sold to growers in the northwest section of the United States, and were not confined to the State of Washington;

That competent scientific experiments have not conclusively demonstrated that the use of Kalo Spray instead of lead arsenate will produce any material increase in sound fruit or any improvement in color;

That the use of Kalo Spray combined either with fish oil or summer oil emulsion as a substitute for lead arsenate will not obviate the necessity for washing the fruit;

That Kalo Spray has not been officially approved by either the U. S. Department of Agriculture or the State College of Washington.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the sum of the spray residue tolerances allowed by the Department of Agriculture for lead and fluorine is the total tolerance allowed for lead and fluorine combined, unless the maximum tolerance for each is stated;

(b) That any scientific experiments have proven the efficacy of Kalo Spray unless respondent's preparation was actually used in such experiments, and unless such experiments indicated that the preparation was efficacious under all climatic conditions;

(c) That the amount of Kalo Spray used by growers in any state or locality is greater than the amount sold by respondent to growers in the particular state or locality mentioned;

(d) That the use of Kalo Spray instead of lead arsenate will produce any increase in sound fruit or improvement in color, unless such results are substantiated by competent scientific experiments conducted under all climatic conditions;

(e) That the spraying of fruit with Kalo Spray combined either with fish oil or summer oil emulsion as a substitute for lead arsenate will obviate the necessity of washing the fruit;

(f) That Kalo Spray has been officially approved by the U. S. Department of Agriculture or the State College of Washington; and from making any other claims or assertions of like import. (Nov. 17, 1936.)

01562. **Vendor-Advertiser—Medicinal Preparations.**—Minard Co., a corporation, Framingham, Mass., vendor-advertiser, is engaged in selling certain medicinal preparations designated Minard's Liniment, Minard's Nose and Throat Drops, Minard's Inhalant, and Minard's Antiseptic Solution, and in advertising represented:

So take heed NOW and stop that cold before it gets a real start.

A few drops of Minard's Inhalant on the handkerchief or pillow will quickly stamp out the first symptoms.

Let's have fewer colds this year—Better still, let's have none at all.

At the very first sneeze, sniffle, nose or throat irritation, get Minard's Nose and Throat Drops * * * 80 years' reputation before the cold has had a chance to develop—it is nipped in the bud.

A cold cannot get a start with Minard's Inhalant and Minard's Nose and Throat Drops handy.

A few drops of each * * * and Mr. Germ is no more.

Today it is known the world over for its absolute effectiveness.

Follow the directions and a cold will never get a start.

Minard's Inhalant and Minard's Nose and Throat Drops * * * keep thousands of people happy and healthy and free from colds.

The minute you feel your head getting stuffy or at the first slight sniffle get Minard's Inhalant and Minard's Nose and Throat Drops * * * and the cold symptoms disappear.

For positive relief insist upon Minard's * * *.

It is also recommended for hay fever. With a severe head cold an effective treatment is to shake a few drops in a small container of hot water. Cover the top (a small funnel is preferable) leaving only a small opening through which you may inhale the warm vapor.

Minard's Liniment is the ideal remedy for sore, aching, stiff, rheumatic muscles, joints, and all muscular troubles.

People living 80 years ago had head colds, nasal congestion and irritation * * * Minard's Liniment came to their relief and stopped these cold ailments.

A higher quality and greater quantity (about 3 oz. for 35¢) of medication than any product used for similar purposes.

Minard's Antiseptic is designed to serve many different purposes and it never fails in it's purpose.

The respondent hereby admits:

That according to reliable medical authority, while these products may be useful for temporary relief in some cases, they would have little, if any, effect where astringents and vaso-constrictors are indicated, as there is nothing in the formulæ to relieve a turgid and edematous mucous membrane; nor is there anything in these formulæ to have a specific therapeutic effect in any of the diseases of the muscles or joints; nor is there any proof that the ingredients of these preparations have any effect in preventing or curing respiratory infections or hay fever.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser, admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either Minard's Inhalant or Minard's Nose and Throat Drops, or the combination thereof, is a competent remedy in the treatment of colds or hay fever unless limited to temporary relief from the pains and discomforts thereof;

(b) That the use of Minard's Inhalant will stop a cold; or is an effective treatment for head colds; or that by its use cold symptoms will disappear or that one would not have a cold at all;

(c) That a few drops of Minard's Inhalant on a handkerchief or pillow will stamp out the first symptoms of a cold;

(d) That by the use of Minard's Nose and Throat Drops a cold is nipped in the bud;

(e) That with Minard's Inhalant and Minard's Nose and Throat Drops handy a cold cannot get a start, or that a few drops of each, or any amount thereof, will destroy the cold germ;

(f) That Minard's Inhalant and Minard's Nose and Throat Drops

1. Keep thousands of people happy or healthy, or free from colds;
2. Are known the world over for their effectiveness;
3. Are a "positive" relief;

(g) That Minard's Liniment is a competent remedy in the treatment of sore, aching, stiff rheumatic muscles, joints, or muscular troubles; or that it constitutes more than a palliative relief of neuralgic and muscular pains;

(h) That Minard's Liniment stopped the cold ailments of people living 80 years ago;

(i) That Minard's Liniment is of higher quality or greater quantity of medication than any other used for similar purposes;

(j) That Minard's Antiseptic never fails in its purpose;

and from making any other claims or assertions of like import. (Nov. 17, 1936.)

01563. Vendor-Advertiser—Correspondence Course.—Hiram Colwell, an individual, Manawa, Wis., vendor-advertiser, is engaged in selling a course of instruction designated "Easy Talk Method" and in advertising represented:

Stammering and stuttering cured quickly at home. Easy Talk Method. Low cost. Write Hiram Colwell, Manawa, Wis.

The one and only sure way to gain perfect control of your speech at all times.

My speech is as perfect as any one that never stammered. Yours can be the same.

You will notice improvement in your speech almost immediately, and in a short time you will be talking normally.

The Easy Talk Method overcomes stammering and stuttering quickly and permanently.

The respondent hereby admits:

That according to reliable medical authority the advertising claims made for the "Easy Talk Method" are exaggerated and misleading, since such treatment cannot be depended upon to cure or to overcome stammering and stuttering.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise, that respondent's "Easy Talk Method" is a specific for the treatment of stammering or stuttering;

(b) That said method is the one and only sure way to gain perfect control of speech; or cures or overcomes stammering or stuttering either quickly or permanently;

(c) That by following the respondent's method a person would improve his speech almost immediately, or be enabled to talk normally in a short time;

(d) That by the use of said method one's speech may become as perfect as that of any one who had never stammered;

and from making any other claims or assertions of like import. (Nov. 18, 1936.)

01564. **Vendor-Advertiser—Medicinal Preparation.**—The Knox Co., a corporation, Los Angeles, Calif., vendor-advertiser, is engaged in selling a preparation designated Kolade Powders, and in advertising represented:

* * * the newest disease of America. This disease called colitis means irritation of the intestines.

Until recently there was no satisfactory treatment for colitis, but now there is a doctor's prescription, called KOLADE POWDERS, which give remarkably quick results.

If you suffer from colitis or stomach ulcers due to hyperacidity, you should get KOLADE * * *

KOLADE POWDERS counteract acidity, thus overcoming gas, heartburn, and many other excessively acid disturbances.

Inflammation of the colon, known as colitis, calls for a treatment which protects irritated areas from further aggravation so as to permit natural healing and for decreasing the acidity that may set up such inflammation.

Not only in colon conditions is KOLADE valuable, but as well in stomach ulcers due to hyperacidity.

Colitis, irritation of the large intestine, is the newest and perhaps the most prevalent disease in America today.

It is caused by modern foods and the tension of present day life.

Fortunately a new treatment has been perfected, which brings ease and comfort to the sufferer within the first two or three days.

If you suffer from colitis or stomach ulcer due to hyperacidity, you will make no mistake in getting KOLADE POWDERS * * * It relaxes, soothes and helps heal sore stomach and colon muscles. Also checks acidity.

* * * when the condition is diagnosed as colitis * * * the prompt use of KOLADE POWDERS may prove of inestimable value.

KOLADE overcomes excess acidity and coats the intestines with a protective lining.

If you suffer from colitis, gas, bloating, heartburn, dull aches in the sides, burning in the stomach, or stomach ulcers due to hyperacidity, you will make no mistake in getting guaranteed KOLADE POWDERS from your druggist.

* * * any inflammation in the colon will be aggravated by further irritation. Since it is impossible to avoid food matter from passing through the sick and sore colon, we must find a way to protect the irritated spots from further irritation. This KOLADE does.

Acidity increases inflammation. It is a common cause of inflammation, since it is logical that in such conditions, the very first thing to accomplish is to counteract acidity. KOLADE does this very thing.

Fortunately, for sufferers a doctor with 30 years' experience has perfected a prescription having the necessary triple action for functional colitis due to acidity.

* * * helps heal mucous membranes * * *

Laxative drugs should be avoided in treating colitis as they further irritate the sensitive membranes.

The respondent hereby admits:

That according to reliable medical authority the causes of colitis are numerous and in many cases the condition is organic, and it is not the newest or most prevalent disease in America;

That Kolade Powders could not be depended upon as a competent remedy in the treatment of all cases of colitis, but is of value only in the relief of functional disorders of the colon due to acidity and as a relief in cases of gastric hyperacidity.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That colitis is the newest or most prevalent disease in America or that it is the medical name for irritation of the intestines or colon;

(b) That Kolade Powders constitute a competent remedy in the treatment of colitis unless limited to the palliative relief of functional irritation of the colon due to gastric hyperacidity;

(c) That Kolade Powders is a new or perfected treatment for colitis or that it brings ease or comfort within any specified time;

(d) That Kolade Powders—

1. Soothe or relax sore irritated bowel or stomach muscles, unless limited to such conditions when due to functional disorders;
2. Help heal mucous membrane, unless limited to conditions due to hyperacidity;
3. Check or overcome acidity;

(e) That Kolade Powders constitute a perfected prescription or have triple action;

(f) Generally that laxative drugs should be avoided in treating colitis;

(g) That until recently there has been no satisfactory treatment for colitis;

(h) By inference or direct statement that Kolade Powders constitute a satisfactory or competent treatment for colitis; or that they are effective in the treatment of stomach ulcers or colitis unless limited to palliative relief afforded in cases of colitis or ulcers due to gastric hyperacidity;

(i) Generally that the treatment of colitis calls for the administration of medicine that will reduce acidity;

(j) That Kolade Powders are of value in the treatment of colon conditions unless limited to cases of functional irritation due to gastric hyperacidity;

(k) Generally that colitis is caused by modern foods or the tension of present day life;

(l) Generally that Kolade Powders are indicated for conditions diagnosed as colitis;

(m) That Kolade Powders are effective in treating aches in the side or burning in the stomach, unless limited to palliative relief of such condition when due to hyperacidity;

(n) By inference or direct statement that it is impossible to prevent irritation of an inflamed colon by regulating the diet;

(o) That acidity is a common cause of inflammation; and from making any other claims or assertions of like import. (Nov. 19, 1936.)

01565. **Vendor-Advertiser—Beauty Lotion.**—O. J. Parham, an individual, doing business under the trade name of O. J.'s Beauty Lotion Co., Shreveport, La., vendor-advertiser, is engaged in selling a product designated O. J.'s Beauty Lotion, and in advertising represented:

Remove that mask of ugly pimples and other blemishes. The daily use of this amazing cosmetic will reward you with immediate results.

If you want a beautiful complexion remove that mask of pimples, * * * liver spots, and skin blemishes. This can be done easily and quickly by the daily use of O. J.'s Beauty Lotion, the all-in-one beautifier.

This amazing cosmetic acts as a deep pore cleanser.

Keep yourself with a fresh, clear, rosepetal skin by the simple use of O. J.'s Beauty Lotion.

Daily use of O. J.'s will keep you with a radiantly healthy and beautiful complexion.

Banish those ugly pimples this quick, easy way!

The daily, simple use of O. J.'s Beauty Lotion will remove that mask of ugly pimples easily and quickly.

Two generations of Southern Beauties have used O. J.'s Beauty Lotion and found it to be the quickest and easiest way to remove that mask of ugly skin blemishes.

Remove that mask of pimples, freckles, liver-spots, and facial discolorations. Know the joy of a perfect complexion, the thrill of admiration. A clear, smooth, radiantly healthy complexion. O. J.'s Beauty Lotion, the all-in-one Beautifier is the miracle of the cosmetic field.

If you are bothered with freckles—remove them quickly. Skin blemishes quickly disappear under daily treatment with this all-in-one beautifier.

Cleanses the pores, bleaches freckles, tan and similar skin blemishes, beautifies, provides a lovely clear complexion. The all-in-one beautifier.

The frequent use of O. J.'s according to the degree of sensitiveness of your skin, * * * corrects oiliness.

It has a cleansing effect on the pores, acts as an astringent to prevent the collection of foreign matter and prevents excessive oily secretion.

The respondent hereby admits:

That, according to the weight of scientific authority, this product will not positively remove pimples, liver spots and other facial blemishes regardless of their cause;

That, according to the weight of scientific authority, this product does not stimulate circulation, or nourish skin tissues;

That, according to scientific authority, this production contains ingredients capable of injuring the skin and poisoning the system.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the daily use of O. J.'s Beauty Lotion will reward one with immediate results;

(b) That O. J.'s Beauty Lotion will remove or banish pimples, (unless limited to pimples due to external causes) liver spots, and skin blemishes;

(c) That O. J.'s Beauty Lotion acts as a deep pore cleanser;

(d) That the daily use of O. J.'s Beauty Lotion

1. Will keep one with a fresh, clear, rosepetal skin; or

2. Will keep one with a radiantly healthy and beautiful complexion;

(e) That two generations of Southern Beauties have found O. J.'s Beauty Lotion to be the quickest and easiest way to remove ugly skin blemishes;

(f) That O. J.'s Beauty Lotion

1. Will produce a perfect complexion;

2. Is the "all-in-one Beautifier"; or

3. Is the miracle of the cosmetic field;

(g) That the frequent use of O. J.'s Beauty Lotion corrects oiliness; and from making any other claims or assertions of like import. (Nov. 18, 1936.)

01566. Vendor-Advertiser—Blend Gasoline.—Eastern Oil Co., Inc., a corporation, Worcester, Mass., vendor-advertiser, is engaged in selling Eastern Benzol Blend Gasoline, and in advertising represented:

EASTERN BENZOL BLEND the GAS of PROVEN PERFORMANCE. A BENZOL BLEND fires the motors of the mighty Graf Zeppelin, powers the engines of Gar Wood and Sir Malcolm Campbell.

Eastern Benzol Blend in your car means death to carbon—guarantees more mileage, insures instant pickup in all kinds of weather—lengthens the life of your car.

BENZOL causes readier vaporizing of motor fuel. RESULT: (Instant start and quicker pickup in any weather.)

BENZOL puts 20,000 more heat units into each gallon of gasoline. RESULT: (There is 25% increase in power.)

BENZOL causes all the fuel to burn. RESULT: (It does away with carbon and harmful fuel smoke.)

BENZOL makes ordinary gasoline almost a pound heavier per gallon. RESULT: (It takes approximately 25% more mileage.)

BENZOL Makes combustion progressive and uniform. RESULT: (It eliminates piston shock and destructive motor vibration—decreases cost of car upkeep.)

EASTERN BENZOL BLEND starts faster, warms up faster than any gasoline.

TESTED POPULARITY—is making Eastern Benzol Blend the favorite fuel of modern motorists.

The GAS of PROVEN PERFORMANCE—Thousands of motorists have switched to Eastern Benzol Blend in the past three weeks.

Exceeds the high specifications set by the United States Bureau of Standards.

Eastern specified a first quality gasoline by the United States Bureau of Standards.

More power—no knocking—sure starting—freedom from carbon contamination. Benzol is specially designed to meet these requirements.

It is significant that a gallon of Benzol has 126,700 B. t. u. s.—which is over 11,600 more than ordinary cracked gasolines. The best grades of Benzol-Gasoline blends have 3,800 more heat (energy) units than good cracked gasoline.

Operators of racing cars, speed boats, and high-speed airplanes use Benzol-Gasoline in their engines. Famous speed boats, the Graf Zeppelin, the Dornier DOX, and other craft having engines requiring high efficiency operation perform on Benzol-Gasoline.

The respondent hereby admits:

That no evidence has been offered to substantiate the claims in the advertising that the respondent's product possesses any greater unit of efficiency than other brands of gasoline, or that it is used in the operation of the Graf Zeppelin, the engines of Gar Wood or Sir Malcolm Campbell, or other craft requiring high-efficiency operation;

There is no evidence to show that the United States Bureau of Standards has made any official declaration favorable to the respondent's product.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Eastern Benzol Blend Gasoline

1. Is the perfect motor fuel or the gas of proven performance;
2. Powers the engines of Gar Wood or Sir Malcolm Campbell;
3. Guarantees more mileage;
4. Insures instant pick-up;
5. Lengthens the life of one's car or decreases the cost of upkeep;
6. Causes readier vaporizing of motor fuel;
7. Puts more units into each gallon of gasoline;
8. Causes all the fuel to burn;
9. Makes combustion progressive or uniform;